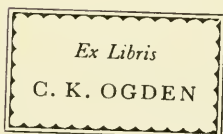






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CONTRIBUTIONS TO INTERNATIONAL LAW  
AND DIPLOMACY

Edited by L. OPPENHEIM, M.A., LL.D.

Late Membre de l'Institut de Droit International,  
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A GUIDE TO  
DIPLOMATIC PRACTICE

CONTRIBUTIONS TO INTERNATIONAL LAW AND DIPLOMACY.

Edited by L. OPPENHEIM, M.A., LL.D., late Whewell Professor of International Law in the University of Cambridge.

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By the Right Hon. Sir ERNEST SATOW, G.C.M.G., LL.D., D.C.L., formerly Envoy Extraordinary and Minister Plenipotentiary. 2 vols. 8vo.

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BY THE  
RT. HON. SIR ERNEST SATOW

G.C.M.G., LL.D., D.C.L.

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## PREFACE TO THE SECOND EDITION

THE death of Dr. L. Oppenheim, Whewell Professor of International Law in the University of Cambridge, on October 8, 1919, has deprived this revised edition of the advantage of his supervision, but it is not thought by the author that he would have disapproved of the alterations. These consist chiefly of the excision of the Russian Court ceremonial for the reception of foreign diplomatists and their wives, and rules governing precedence among such persons, and an enlargement of the section on Conferences in Volume II, Chapter XXVI, including the Peace Conference of Paris, 1919. In Chapter III, the history of the office of Secretary of State for Foreign Affairs has been re-written, and the account of diplomatic archives in various European Countries has been enlarged. In Chapter X, an account is given of the ultimatums delivered in 1914 which preceded the Great War, but otherwise there is no change to be noted in diplomatic practice up to the present date. The meetings of the "Supreme Council" to deal with problems arising out of the Peace Treaties are in all probability unlikely to be continued when once the condition of things in Europe shall again have become normal. The numbering of the paragraphs has been preserved throughout, and is unaffected by the excisions specified above. Chapter V on Titles and Precedence of Sovereigns has for the most part ceased to have any but an historical interest, owing to the disappearance of sovereignty in the German empire and its component states, in Austria-Hungary and in Russia.

Appendix III has been enlarged by a selection from the more important works relating to the history of the Great War which have been published during the last few years.

The gratitude of the author is due to Sir Adolphus Ward for the corrections and suggestions contained in his notice of the first edition which appeared in the issue of the *English Historical Review* for July, 1917.

To the Counsels to Diplomats offered in Chapter IX he would desire to add that the task of a diplomatic agent is to reconcile the interests of his own nation with those of others, and to preserve the honour of his own unblemished and devoid of selfish aims, in short, to cultivate what has been so well described as the international mind.

## PREFACE TO THE FIRST EDITION

DIPLOMATIC privileges and practices, the classification of diplomatic agents, the position of Sovereigns and of property owned by them in foreign countries, the framework of treaties and conventions, ratifications, and other subjects treated of in the following chapters, may be considered as forming a part of International Law, and most treatises on that science deal with them. But it was thought that their fuller discussion might be of practical utility, not only to members of the services, but also to the general public and to writers who occupy themselves with international affairs. Hence the origin of the present work, believed to be the earliest of its kind published in England.

It has had its forerunners in other languages. Amongst them must be mentioned, in the first place, the well-known *Guide Diplomatique* of Charles de Martens, of which the latest edition, by F. H. Geffcken, came out in 1866, and the *Cours de Droit Diplomatique* of Pradier-Fodéré, containing lectures delivered by him at the University of Lima from 1877 to 1879. Vol. iii of Garden's *Traité Complet de Diplomatie*, published anonymously in 1833, includes various documents of importance. The *Guide Pratique des Agents Politiques* of García de la Vega (Brussels, 1873), and the *Guía Práctica del Diplomático Español*, by de Castro y Casaleiz, of which a second edition appeared in 1886, are useful for Belgian and Spanish practice and documentary forms. In German we have vol. ii of Schmelzing's *Systematischer Grundriss des praktischen Völker-Rechtes*,

1819, *Das Europäische Gesandtschaftsrecht*, by A. Miruss, 1847, and Dr. Alt's *Handbuch des Europäischen Gesandtschafts-Rechtes* (Berlin, 1870). Wicquefort's *L'Ambassadeur et ses Fonctions*, nouvelle édition, 1730, gives a full account of the practice of his day, but much of it is now out of date. The same is partly true of Callières' *De la Manière de négocier avec les Souverains*, but his little essay is a mine of political wisdom. Lastly, J. W. Foster's *The Practice of Diplomacy as illustrated in the Foreign Relations of the United States*, 1906, must on no account be neglected. From all of these productions much information has been derived, and embodied in these pages.

Something must also be said about the plan of the present publication. Instead of placing the documents from which quotations are made in an appendix, as is perhaps more usual, it has been judged better for the immediate purpose to cite them in the course of the chapter which they are severally intended to illustrate. Those who do not care to examine such documents may skip them judiciously.

The second volume, which treats of Congresses and Conferences, of Treaties, Conventions, Declarations and other forms of international compacts (all equally binding on the parties, whether concluded under the authority conferred by special full-powers, or merely in virtue of the powers inherent in the office held by the negotiators), may doubtless be found dull reading by those who do not desire to study these subjects in much detail. But those who are officially concerned with negotiations need to have a thorough knowledge of forms. For this reason the accounts of such transactions are given in mere outline, the actual substance being generally left out of account. Thus the manner of conducting Congresses and Conferences, and of framing treaties and the like, alone is analysed in the majority of instances. Fuller particulars of an historical character are, however,



offered with regard to Good Offices and Mediation, which, though often confounded, require to be carefully distinguished from each other.

On the whole, also, it has been considered preferable to quote treaties and other State-papers in the language of the originals, instead of attempting translations into English, which do not always reproduce with faithfulness the exact thought of the writer. In the earlier part of the first volume, such endeavours have been made, but, it is to be feared, not always to the satisfaction of the accurate student. Instead of merely summarizing the opinions of text-writers, it has been thought fairer in most cases to give their *ipsissima verba*, where they are cited in support of statements advanced on their authority. The foreign languages of the various State-papers are mainly those with which a diplomatist may be expected to have become acquainted in the course of his career, and if the general reader is induced by curiosity to extend his knowledge of other European languages than his own, that will be a result not devoid of evident advantage. "*Plus on se familiarise avec les langues étrangères, plus disparaissent ces préventions, ces haines nationales que la différence des langues ne contribue que trop à entretenir.*"

Considerable difficulty has been encountered in consequence of the variation in the spelling of names both of persons and places found in authors of diverse nationalities. This is particularly the case with Russian names, which are not written uniformly by French, German and English writers. The plan followed has been to adhere to the orthography which occurs in the original quoted from. This may have its inconveniences, but it has seemed safer than to aim at one consistent transliteration of the Russian alphabet. English teachers and professors of the language have not yet agreed upon a single method, but are divided between at least two schools, one of which would employ an invari-

able equivalent for each letter of that alphabet, regardless of pronunciation, while the other advocates a phonetic system which often would be no guide to the original Russian orthography.

At the end of the second volume will be found lists : first, of works quoted, secondly, of treatises on International Law which may be found useful by diplomatists, and thirdly, of a selection of works, chiefly historical and biographical, which are recommended for perusal.

Diplomatic incidents which have arisen since the actual outbreak of the present war, such as those relating to *persona non grata*, safe-conduct of envoys, or matters of privilege, have not been discussed in the following pages, for the simple reason that sufficient information is not as yet available.

The preparation of these volumes would have been almost impossible but for the ready assistance received from former colleagues of the Diplomatic Service and Foreign Office and for the loan of books, made especially by Mr. E. C. Blech, the Librarian of the Foreign Office, and his immediate predecessors in that post. For these helps the most sincere gratitude is tendered to all those friends. The toil of proof-reading has been shared by the writer's brother, Mr. S. A. M. Satow, a Master of the Supreme Court of Judicature.

OTTERY ST. MARY,  
December 15 1916.

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## CHAPTER XXIV

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# A GUIDE TO DIPLOMATIC PRACTICE

## BOOK I

### ERRATA

#### VOL. I

- P. 14.—The Foreign Office papers up to the end of 1905 are now at the Public Record Office.
- P. 16.—The French Archives are now open to public inspection up to 1848.
- P. 24, § 22.—Christianissimo should be Christianissimus.
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Other definitions are—

“ La diplomatie est l'expression par laquelle on désigne depuis un certain nombre d'années, la science des rapports extérieurs, laquelle a pour base les *diplômes* ou actes écrits émanés des souverains ” (Flassan). “ La science des relations extérieures ou affaires étrangères des Etats, et, dans un sens plus déterminé, la science ou l'art des négociations ” (Ch. de Martens.) “ La science des rapports et des intérêts respectifs des États ou l'art de concilier les intérêts des peuples entre eux ; et dans un sens plus déterminé, la science ou l'art des négociations ; elle a pour étymologie le mot grec *δίπλωμα*, duplicata, double ou copie d'un acte émané du prince, et dont la minute est restée ” (Garden).

“ Elle embrasse le système entier des intérêts qui naissent des rapports établis entre les nations : elle a pour objet leur sûreté, leur tranquillité, leur dignité respectives ; et son but direct, immédiat, est, ou doit être au moins, le maintien de la paix et de la bonne harmonie entre les puissances ” (same author).

“ L'ensemble des connaissances et des principes qui sont nécessaires pour bien conduire les affaires publiques entre les états ” (de Cussy, *Dictionnaire du Diplomate et du Consul*).

“ La science des relations qui existent entre les divers Etats, telles qu'elles résultent de leurs intérêts réciproques, des principes du droit international et des stipulations des traités ” (Calvo).

“ L'art des négociations. Klüber développe assez bien cette définition en disant que c'est ‘ l'ensemble des connaissances et principes nécessaires pour bien conduire les affaires publiques entre les États.’ La diplomatie éveille en effet l'idée de gestion des affaires internationales, de maniement des rapports extérieurs, d'administration des intérêts nationaux des peuples et de leurs gouvernements, dans leur contact mutuel, soit paisible soit hostile. On pourrait presque dire que c'est ‘ le droit des gens appliqué ’ ” (Pradier-Fodéré).

“ Die Kenntniss der zur äusseren Leitung der öffentlichen Angelegenheiten und Geschäfte der Völker oder Souveraine, und der zu mündlichen oder schriftlichen Verhandlungen mit fremden Staaten gehörigen Grundsätze, Maximen, Fertigkeiten und Formen ” (Schmelzing, *Systematischer Grundriss des Völkerrechts*).

According to Rivier, the use of “ diplomacy ” is three-fold—

1st. La science et l'art de la représentation des États et des négociations.

2nd. On emploie le même mot . . . pour exprimer une notion complexe, comprenant soit l'ensemble de la représentation d'un État, y compris le ministère des affaires étrangères, soit l'ensemble des agents politiques. C'est dans ce sens que l'on parle du mérite de la diplomatie française à certaines époques, de la diplomatie russe, autrichienne.

3rd. Enfin on entend encore par diplomatie la carrière ou profession de diplomate. On se voue à la diplomatie, comme on se voue à la magistrature, au barreau, à l'enseignement, aux armes.<sup>1</sup>

§ 2. The diplomat, says Littré, is so-called, because diplomas are official documents (*actes*) emanating from princes, and the word diploma comes from the Greek *δίπλωμα* (*διπλόω*, to double) from the way in which they were folded. A diploma is understood to be a

<sup>1</sup> *Principes du droit des gens*. Paris, 1896, vol. ii. 432. (The author was a Swiss consul-général, and professor at Brussels.)

document by which a privilege is conferred: a state paper, official document, a charter. The earliest English instance of the use of this word is of the year 1645.

Leibniz, in 1693, published his *Codex Juris Gentium Diplomaticus*, Dumont in 1726 the *Corps universel Diplomatique du Droit des Gens*. Both were collections of treaties and other official documents. In these titles *diplomaticus*, *diplomatique*, are applied to a body or collection of original state-papers, but as the subject-matter of these particular collections was *international* relations, "corps diplomatique" appears to have been treated as equivalent to "corps du droit des gens," and "diplomatique" as "having to do with international relations." Hence the application also to the officials connected with such matters. *Diplomatic body*<sup>1</sup> now came to signify the body of ambassadors, envoys and officials attached to the foreign missions residing at any seat of government, and *diplomatic service* that branch of the public service which supplies the *personnel* of the permanent missions in foreign countries. The earliest example of this use in England appears to be in the "Annual Register" for 1787. Burke, in 1796, speaks of the "diplomatic body," and also uses "diplomacy" to mean skill or address in the conduct of international intercourse and negotiations. The terms *diplomat*, *diplomate*, *diplomatist* were adopted to designate a member of this body.<sup>2</sup> In the eighteenth century they were scarcely known. Disraeli is quoted as using "diplomatic" in 1826 as "displaying address" in negotiations or intercourse of any kind (New English Dictionary). *La diplomatie* is used in French for the art of deciphering ancient documents, such as charters and so forth.

<sup>1</sup> This use of the expression first arose in Vienna about the middle of the eighteenth century (Ranke, cited by Holtzendorff, iii. 617.)

<sup>2</sup> Callières, whose book was published in 1716, never uses the word *diplomate*. He always speaks of "un bon," or "un habile, négociateur."



§ 3. The words, then, are comparatively modern, but diplomatists existed long before the words were employed to denote the class. Machiavelli (1469-1527) is perhaps the most celebrated of men who discharged diplomatic functions in early days. D'Ossat (1536-1604), Kaunitz (1710-1794), Metternich (1773-1859), Pozzo di Borgo (1764-1842), the first Lord Malmesbury (1764-1820), Talleyrand (1754-1838), Lord Stratford de Redcliffe (1786-1880) are among the most eminent of the profession in more recent times. If men who combined fame as statesmen with diplomatic reputation are to be included, Count Cavour (1810-1861) and Prince Bismarck (1815-1898) enjoyed a world-wide celebrity.

§ 4. "Diplomatist" ought, however, to be understood as including all the public servants employed in diplomatic affairs, whether serving at home in the department of foreign affairs, or abroad at embassies, legations or diplomatic agencies. Strictly speaking, the head of the foreign department is also a diplomatist, as regards his function of responsible statesman conducting the relations of his country with other states. This he does by discussion with their official representatives or by issuing instructions to his agents in foreign countries. Sometimes he is a diplomatist by training and profession, at others he is merely a political personage, who may or may not be possessed of special knowledge fitting him for the post.

§ 5. When we speak of the "diplomacy" of a country as skilful or blundering, we do not mean the management of its international affairs by its agents residing abroad, but their direction by the statesman at the head of the department. Many writers and speakers are disposed to put the blame for a weak or unintelligent diplomacy on the agent, but this mistake arises from their ignorance of the organization of public business. The proper person to blame is the Secretary of State, or Minister for Foreign Affairs. Sometimes, in autocratic governments, the responsibility lies on the sovereign.



## CHAPTER II

### IMMUNITIES OF THE HEAD OF A FOREIGN STATE

§ 6. Exemption from civil and criminal jurisdiction—§ 7. Foreign sovereign travelling incognito—§ 8. Duke of Cumberland—§ 9. President of a republic—§ 10. Real property of a sovereign in a foreign state—§ 11. Sovereign suing in courts of a foreign state—§ 12. Deposed and abdicated sovereigns, and ex-presidents.

§ 6. A SOVEREIGN<sup>1</sup> within the territory of a foreign sovereign, so long as he is there in his capacity of sovereign, is exempt from the civil and criminal jurisdiction of the local tribunals, from all taxation, police regulations ; his place of residence may not be entered by the state authorities. The movables he carries with him are also exempt from customs duties and visitation by customs officers. This privilege is also extended by general comity to goods destined for delivery to a foreign sovereign or his family in their transit through foreign countries.<sup>2</sup> The members of his suite enjoy the same immunities as himself. If he commits acts against public order or security, he can only be expelled, the necessary precautions being taken to prevent a repetition of such acts. On the other hand, he cannot exercise any jurisdiction over persons belonging to his suite. If one of them should commit an offence, he must be sent home in order that the case may be dealt with by the tribunals of his own country, and similarly with respect to civil matters. The foreign sovereign cannot protect a native of the country who takes refuge with him, but must surrender him on demand. He must not ignore administrative regulations made for the preservation of the

<sup>1</sup> Hall, 168 ; Ullmann 158.

<sup>2</sup> Phillimore, ii. 123.

public peace and public health. He must, of course, take care that they are equally observed by the persons in his suite.

§ 7. If, however, a sovereign travels incognito in the territories of a foreign state, he can only claim to be treated as a private individual ; but if he declares his identity, then he becomes entitled to all the immunities pertaining to his rank as sovereign. The same rule holds good if he enters the service of another sovereign ; he can only recover his rights by resigning the service in which he is engaged.

§ 8. The case of the Duke of Cumberland, who was a peer of the realm in Great Britain, and King of Hanover, seems peculiar. It is conceived that if he had come to England as Duke, he could only become entitled to be treated as a sovereign in England by returning to Hanover and coming again in his capacity of King. He could not, we think, put on and lay down either title at his simple will and pleasure.

§ 9. Nothing seems to have been decided as to the position of the President of a Republic, when in the territories of another State. It cannot, however, be doubted that no Head of a Republic would expose himself to the risk of being refused the immunities accorded to a sovereign, and that on the rare occasion when a president visits a foreign State he either expects to receive, or has been promised beforehand, treatment in all respects the same as that of a sovereign.

§ 10. If a sovereign privately owns real property in a foreign state, it is subject to the jurisdiction of the local tribunals. Hall holds,<sup>1</sup> with justice in our opinion, that this applies also to personalty, not coming within the categories previously mentioned, owned in a foreign state. This seems also to be Ullmann's<sup>2</sup> view. Execution of a judgment in respect of contract or tort might in practice encounter difficulties. The practice of the English courts, both of equity and common law, has been

<sup>1</sup> 170.

<sup>2</sup> 159 and footnote.

in favour of the privileged exemption of sovereigns in all matters of contract. And the French courts have upheld the same principle.<sup>1</sup>

§ 11. If he appeals in a civil matter to the courts of a foreign State, he must submit to cross-proceedings being taken against him, as the condition on which his action is entertained by the Court. In England he must comply with the rules of the Court, for a sovereign bringing an action in the courts of a foreign country brings with him no privilege which can vary the practice or displace the law applying to other suitors in those Courts.<sup>2</sup>

§ 12. A sovereign who has been lawfully deposed by his people, or who has abdicated, and whose deposition or abdication has been recognized by other states, and a president of a republic whose term of office has expired, or who has been overthrown by a revolution, enjoy no immunities. Any privileges accorded to such personages during their residence in other countries must depend on the course which the authorities of those countries deem it expedient to adopt.<sup>3</sup>

<sup>1</sup> Phillimore, ii. 125-6.

<sup>2</sup> *Ibid.*, ii. 132.

<sup>3</sup> *Ibid.*, ii. 131.

## CHAPTER III

### THE MINISTER FOR FOREIGN AFFAIRS

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§ 17. In England, history of the office—§ 18. In other countries  
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§ 13. THE Minister for Foreign Affairs is the regular intermediary between the state and foreign countries. His functions are regulated by domestic legislation and traditions. Art. II. Sect. 2. 2 of the Constitution of the United States declares that "The President shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls." In the Argentine Republic the President appoints envoys with the consent of the senate.

Foreign governments address themselves to the Minister for Foreign Affairs either through their own diplomatic agents or through the diplomatic agent who represents his sovereign or government at the capital of the foreign Power. He signs the Notes and other communications concerning relations with other countries. Under his orders are drawn up documents connected with foreign relations, drafts of treaties and conventions, statements of fact and law, manifestoes, declarations of war. He proposes to the Head of the State the nomination of diplomatic agents, he draws up their credentials and full powers, and gives them their instructions. He also advises the Head of the State as to the acceptance of persons who have been proposed to be accredited to him. He issues the exequaturs of foreign consular officers. The consular service receives

its orders from him. On taking office, he informs the diplomatic agents of foreign states, as well as the agents of his own country accredited abroad. Foreign representatives address themselves to him in order to obtain an audience of the Head of the State.<sup>1</sup>

§ 14. The powers of the Minister for Foreign Affairs vary according to the political organization of different states. In Great Britain, for example, it is the custom to submit to the sovereign drafts of all the most important instructions addressed to the diplomatic agents abroad, to furnish to him printed copies of reports from the agents in other countries as well as Notes presented by foreign diplomatic agents in London. The negotiation of treaties rests with the Minister, and he watches over their execution. The ratifications of treaties are exchanged by him or his agents, without submission to the legislature, except when money clauses form part of the instrument, for which provision must be made by Parliament. Neither the sovereign nor Parliament can give orders directly to the diplomatic agents.

i. 9. " Il faut qu'un Ministre des Affaires étrangères soit doué d'une sorte d'instinct qui, l'avertissant promptement, l'empêche, avant toute discussion, de jamais se compromettre. Il lui faut la faculté de se montrer ouvert en restant impénétrable, d'être réservé avec les formes de l'abandon, d'être habile jusque dans le choix de ses distractions ; il faut que sa conversation soit simple, variée, inattendue, toujours naturelle et parfois naïve, en un mot, il ne doit pas cesser un moment, dans les vingt-quatre heures, d'être ministre des Affaires étrangères." (Quoted from Talleyrand by Welschinger, *La Guerre de 1870*, i. 191.)

§ 15. The King's Secretary is first heard of in 1253, in the reign of Henry III. The office was at first a part of the royal household. Its holder might be a man of character and capacity, fit to be a member of the King's Council, or to be sent as an envoy to foreign powers. Such were the Secretaries of Henry III and Edward I. Or he might be an inferior officer of the household, and

<sup>1</sup> Cf. Rivier, i. 426, cited in Nys, ii. 332.

such seems to have been the position of the Secretary of Edward III.

In 1433 (reign of Henry VI), two Secretaries were appointed, one by the delivery of the King's Signet, the other by patent. A second Secretary had become necessary for the transaction of the King's business in France.

In 1476 (reign of Edward IV) a newly appointed Secretary is described as Principal Secretary, not to denote a difference in rank between the two, but to mark the responsible character of the office, as distinct from that of a mere clerk.

In the reign of Henry VIII the position of Principal Secretary is advanced. They are still members of the household, but rank next to the greater household officers, and in Parliament and Council they have their place assigned by Statute. In 1539 a warrant issued to Thomas Wriothesley and Ralph Sadler gave them "the name and office of the King's Majesty's Principal Secretaries during his Highness' pleasure." Cromwell was for a short time Secretary to Henry VIII, Sir William Cecil Secretary to Elizabeth from her accession until he became Lord Treasurer in 1571. After Henry's reign the Secretary ceased to be a member of the household.

During the greater part of Elizabeth's reign there was but one Secretary but, at the close of it Sir Robert Cecil shared the duties with another, he being called "Our Principal Secretary of Estate," and the other "one of our Secretaries of Estate." From this time, until the year 1794, it was the rule that there should be two Secretaries of State; the exceptions occurred in 1616, when there were three—from 1707 until 1746, when there was usually a third Secretary for Scotch business—and from 1768 until 1782, when there was a third Secretary for Colonial business.

From the Revolution until 1782, except during the temporary existence of the Scotch and the Colonial



Secretary, the duties of the two Secretaries were divided geographically into Northern and Southern Departments.<sup>1</sup> The duties of the Northern Department consisted in communications with the northern powers of Europe, *i.e.*, Russia, Prussia, Germany (*i.e.*, the German Empire and its constituent states), Denmark, Sweden, Poland, the Netherlands, the States-general and the Hanse Towns, those of the Southern comprised our dealings with France, Spain, Portugal, Switzerland, the different states of Italy, Turkey and the Barbary States, as well as Irish and Colonial business and the work of the Home Office. There were two separate offices, an arrangement which caused much inconvenience. Down to 1782 the two Secretaries were described in official documents relating to the staff common to both, as "His Majesty's Principal Secretaries of State for Foreign Affairs." The Northern Secretary used to announce himself to resident heads of foreign missions thus: "Le Roi m'ayant fait l'honneur de me nommer aujourd'hui son Secrétaire d'État pour le département du Nord," but on March 27, 1782, Fox announces to them that "le Roi m'ayant fait l'honneur de me nommer son Secrétaire d'État pour le Département des affaires étrangères, etc." Since 1782, therefore, the Secretaryship of State for Foreign Affairs has always been entrusted to a single person. Sir William Anson says: "I cannot ascertain that any Order in Council or Departmental minute authorizes or records this important administrative change." *Law and Custom of the Constitution*, 3rd edition, vol. ii, pt. i, p. 166, from which work the greater part of this section is derived.

The mode of appointment of a Secretary of State is by the delivery of three seals, the Signet, a lesser seal and a small seal called the *cachet*; all these are engraved with the royal arms, but the Signet alone has the supporters. In the Foreign Office the in-

<sup>1</sup> There is another suggestion that the division into North and South was first made in 1674, and that from 1702 it was continuous.

struments which authorize the affixing of the Great Seal to powers, to treaties and ratifications of treaties pass under the Signet as well as the sign manual, and are countersigned by the Secretary of State. The second seal is used for royal warrants and commissions, countersigned by the Secretaries of State. The cachet is used to seal the envelopes of letters containing communications of a personal character made by the King or Queen to a foreign sovereign. Hatschek ii, 181, says : " die Bestallung erfolgt durch Uebergabe der 3 kleineren Siegel, und seit neuerer Zeit regelmässig durch Patent." But this seems to be incorrect. Anson, 3rd edit., v. ii, 168n, says : " Patents were issued from the time that a second Secretary was first appointed in the fifteenth century, and the practice seems to have been followed till 1852. In that year Lord John Russell became Foreign Secretary and Leader of the House of Commons in Lord Aberdeen's Ministry, and as he did not expect to be able to combine these two duties for long, he did not take out a patent, and in fact resigned the Foreign Office within two months. From that time the practice was intermittent until 1868. Since the retirement of Mr. Disraeli's Ministry in that year patents have not been issued ; nor in any case would they affect the powers of the Secretary, for these follow the seal.

[Source mainly Anson's *The Law and Custom of the Constitution*, 3rd edit., 1907. Vol. ii, part i.]

§ 16. In the United States the Minister for Foreign Affairs, who is entitled " the Secretary of State," is also keeper of the seals. But the authority of the President predominates in foreign affairs (as in all other matters).

§ 17. In some countries the functions of Foreign Secretary are combined with those of Minister-President of the Cabinet.<sup>1</sup>

§ 18. It was in the fifteenth and sixteenth centuries that most of the European monarchies established a special branch of the administration for foreign affairs. In the reign of Francis I of France there was a secret

<sup>1</sup> Ullmann, 161.



committee to which was committed the discussion of questions of foreign policy. In 1547, at the beginning of the reign of Henry II, the department of Secretaries of State was founded. There were four such secretaries who shared home and foreign affairs among them. In the reign of Charles IX the Foreign Office was divided into four departments: (1) Italy and Piedmont, (2) Denmark, Sweden and Poland, (3) the Emperor, Spain, Portugal, the Low Countries, England and Scotland, (4) Germany and Switzerland. In 1589 a single ministry for foreign affairs was formed, and all foreign correspondence was committed to a single Secretary of State. But previously to 1787 he shared the direction of home affairs with the departments of War, Marine and the Household. Thus, he had charge of Upper and Lower Guyenne, Normandy, Champagne and part of La Brie, the principality of Dombes and Berry. But on Montmorin succeeding to Vergennes as Secretary of State in that year, his functions were confined to foreign affairs.<sup>1</sup>

Charles V of Spain had a secret council of state which furnished advice to the Emperor through the minister charged with the foreign branch of the administration, while in Spain a somewhat complicated system was established.

Under the Tsar Ivan III of Russia a "chamber of embassies" was employed about international relations.

§ 19. In most countries special care has been devoted to the preservation of public documents. In England, from the fourteenth century, papers were deposited at the Tower of London. Queen Elizabeth, in 1578, created the State Paper Office for the documents belonging to the Secretary of State, which has developed into the existing Public Record Office. The diplomatist will, of course, be interested mainly in the department of national archives which is concerned with international matters.

<sup>1</sup> Masson, F., 56.

During the seventeenth and eighteenth centuries the foreign, domestic, colonial and military records, generally described as State Papers, were preserved in a common repository, at first in Whitehall, and after 1833 in the new State Paper Office built in St James' Park. During this period they were under the immediate charge of a Keeper of the State Papers and a separate staff; but in 1854 the establishment of the State Paper Office was amalgamated with that of the Public Record Office, and in 1862 the building was pulled down and its contents transferred to the Record Office.

The older Foreign Office records, that is those prior to 1760, were transferred to the Public Record Office in 1862, with the rest of the contents of the State Paper Office. Frequent transfers of the more modern papers have taken place since 1868, but at irregular intervals. The Foreign Office Records now in the Public Record Office extend up to 1869. Correspondence of later date is retained in the office, which also keeps the indexes and registers of letters received from 1810.

In 1904, the Public Record Office printed a list of State Papers (Foreign) anterior to 1782.<sup>1</sup> These are classified into :—

1. General Correspondence 1547-1577 calendared, 1577-1780 calendar in progress.
2. Foreign Entry-books.
3. Foreign Ministers (in England) from 1688.
4. News-Letters.
5. Royal Letters.
6. Treaty Papers.
7. Treaties.
8. Archives (of British Legations).
9. Miscellaneous.
1. Includes memorials from foreign ministers in England previous to 1689.
2. Copies or extracts from outgoing letters.

<sup>1</sup> See Sec. Rep. of the Royal Commission on Public Records, vol. ii. (Part i.), 1914 (Cd. 7544).

4. Mainly unsigned despatches, copies of foreign gazettes and news sheets forwarded by English agents abroad.

5. From 1689 onwards consist chiefly of interchange of courtesies between English and Foreign potentates.

6. Consist of formal documents and papers connected with various negotiations conducted by English ministers and plenipotentiaries, but do not include the correspondence addressed to Secretaries of State, which is in 1.

7. Includes protocols of Treaties with their respective ratifications and numerous subsidiary documents (*e.g.*, copies of full-powers).

*Reports of the Select Committee appointed to inquire into the state of the Public Records of the Kingdom, etc.*, reported by Charles Abbot, Esq., on July, 1800, at p. 537, mentions the following public institutions which are in possession of public documents connected with Foreign Affairs. The British Museum, the University Library, Cambridge, the Bodleian Library, the Inner Temple Library, the Ashmolean Museum.

A very valuable printed collection of English State Papers, is Rymer's *Foedera*, of which the first volume was published in 1704. It begins with 1134, but does not come lower in date than 1654.

It appears that in former times, before the formation of a regular diplomatic service of the Crown, it was the habit of English ambassadors and other diplomatic agents to appropriate the despatches they had received and the drafts of those they had sent during their term of office, so that in the Public Record Office there will be found only the original despatches received from abroad, and the drafts of those sent out. The originals of many treaties, with the full-powers of the negotiators and the instruments of ratification will also be found there.

*France.* Up to the middle of the seventeenth century the papers of ambassadors and ministers plenipotentiary, and the collection of documents relating to matters of

negotiation with foreign powers, remained the property of the persons who had acted as agents of the French Government. A first attempt at bringing diplomatic papers together, made by Richelieu in 1628, failed to effect a change, but gradually a "*Depôt des minutes des Affaires étrangères*" was formed, which was transferred to Versailles in 1763, and thence to Paris in 1796. The documents were housed in various places, and the archives were not finally organized at the Ministry for Foreign Affairs till 1853. By a decree of February 21, 1874, they were thrown open to the public, which decree with those of July 20 of the same year and of April 6, 1880, regulates the whole matter. Documents earlier than May 30, 1814 (date of the first Treaty of Paris), may be published after permission has been applied for and obtained from the Minister for Foreign Affairs. The archives form two divisions: 1. Political correspondence consisting of the despatches of ambassadors and the correspondence of the Ministry with French agents abroad, complete from 1662, with a few portions going back to the sixteenth century; the whole is arranged according to countries, in chronological order. To each of the collections, "Angleterre," "Prusse, Russie, etc.," there is a series of supplementary volumes containing documents of value for diplomatic history; 2. Memoirs and documents, comprising miscellaneous papers, the collection of originals of treaties, questions of ceremonial and procedure. Consult for this the *Inventaire des archives du Ministère des Affaires étrangères, mémoires et documents, fonds divers*, published in 1893. The Commission des Archives Diplomatiques, for some years past has been engaged in publishing two series of volumes, 1. *Inventaire analytique des Archives du Ministère des Affaires étrangères*; 2, *Recueil des instructions données aux ambassadeurs et ministres de France depuis les traités de Westphalie jusqu'à la Révolution française*. At pp. 48 and 49 of Langlois et Stein will be found useful lists of works relating to this

subject, of which the materials have been derived from the French Foreign Office archives.

In *Germany* the organization of archives in the different states is very varied, as well from the side of administrative centralisation as from that of facilities granted for the examination and transcription of documents. It is advisable to make application well in advance, and permission must be obtained, in Prussia from the Director-general of the archives, in other states from the Minister of the Interior on the archivist's recommendation. The Königlich geheimes Staats-archiv at Berlin contains diplomatic documents of Prussia during the past three centuries. The Saxon archives at Dresden are rich in diplomatic documents beginning with the fifteenth century. The archives of Düsseldorf are also of great historical value. Those of Bavaria at München go back to the commencement of the fifteenth century.

The archives of the *former Austro-Hungarian Empire* were not centralized. There existed three dépôts of State-archives at Vienna, Buda-Pest and Prague. Of these the most important are the Kaiserliches und Königliches Haus-Hof und Staats-archiv at Vienna, where are the diplomatic archives dependent on the Ministry of the former Imperial Household and Foreign Affairs, readily accessible. Reports of envoys to foreign courts begin in 1546, the collection of instructions to ambassadors in France in 1654. There is a special collection of papers relating to the period of the French Revolution and First Empire, covering the years 1789 to 1815. At Buda-Pest were housed the national archives of Hungary, Transylvania, Croatia and Fiume. Those of the Czech state preserved at Prague relate to administrative matters, and have no historical importance.

The diplomatic archives of the ancient republic of Ragusa go back to the reign of Louis XII of France, and possess letters of the kings of France from that



period. They are also interesting for the history of the Ionian Islands under the Directory and the First Empire.

*Belgium.* Archives générales du Royaume at Brussels. Langlois and Stein at p. 660 give a general classification of the papers relating to diplomatic and political history from the middle of the sixteenth century to the end of the eighteenth, and at p. 664 a list of calendars of state-papers edited by L. P. Gachard, Kervyn de Lettenhove and others, mostly published at Brussels.

*Spain.* The general archives of Castile are kept at Simancas since 1543 and have been open to the public since 1844. Some historical documents are to be found at Alcalá de Henares. The following works contain information concerning the important collection at Simancas. Sanchez, Fr. Diaz, *Guía de la Villa y archivo de Simancas*, Madrid, 1885; R. de Castilla y Perosso, *Apuntes históricos sobre el Archivo general de Simancas*, Madrid, 1873; Gachard, *Notice historique et descriptive des Archives de Simancas*, prefixed to vol. i of *Correspondance de Philippe II*, Brussels, 1848. From these archives were drawn the materials for the *Calendar of letters, despatches and State Papers relating to the negotiations between England and Spain, 1485-1542*, by Bergenroth and Gayangos, and *Calendar of letters and State Papers relating to English affairs in the Archives of Simancas*, by Martin A. S. Hume.

Archivo general de las Indias at Seville.

*Portugal.* The royal archives were founded at the end of the fourteenth century, and were kept in one of the towers of the Royal Palace, to which the name of Torre de Tombo was given. The archives were transferred in 1755 to the convent of San Bento, but under the old name.

*Vatican Archives.* For the history of the Archives of the Holy See in the middle ages, and up to the earlier years of the nineteenth century, see Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien*, 2nd edition, 1912. At the Vatican are kept a complete

collection of ancient Papal official acts, the reports of the nuncios and legates acting as Papal ambassadors abroad, the correspondence of the Popes with foreign sovereigns, and the greater part of the archives of the Comté Venaissin since the fourteenth century. The Papal Archives were thrown open in 1881 by Leo XIII. In 1810 they were removed to Paris by Napoleon, and under the Restoration were returned to Rome.

*Kingdom of Italy.* This government has inherited the archives of the former Italian states. By a decree of 1874 all the various sets of State Archives were attached to the Ministry of the Interior. There now exist seventeen State Archives, of which the most important are those of Florence, Venice, Turin, Genoa, Naples, Bologna, Milan, Palermo and Rome. At the last of these will be found papers of the former pontifical government not possessed by the Vatican, and a portion of the confiscated archives of certain religious orders, e.g., of the Jesuits. Besides the documents preserved at the Vatican, there are others belonging to the Barberini, Corsini, Chigi, Colonna, Pignatelli, Orsini and Caetani families. Those at the Biblioteca Angelica belong to the Italian government. There are papers at the Biblioteca Casanatense (Minerva), and the Baronius papers at the Vallicellane.

*Holland.* The Rijks Archief, at the Hague, contains the diplomatic collection under the name of Buitenlandsche Zaken.

*Denmark.* Rigsarchiv at Copenhagen. The documents bearing on diplomatic history are arranged in three series, (a) Negotiations with foreign countries and their diplomatic representatives at Copenhagen; (b) Reports of Danish ministers abroad; papers after 1755 are kept at the Ministry for Foreign Affairs, complete from 1661; (c) Despatches and instructions from the Danish Government to its agents abroad, and Legation archives.

*Sweden.* The government archives have not yet



been brought together at one centre. At Stockholm there are the Royal Archives, which possess the correspondence of Swedish diplomatic agents abroad. Owing to the intimate nature of the relations between Sweden and France in former times the collection is particularly rich in documents illustrative of that connexion, from the middle of the sixteenth century. At p. 814 of Langlois and Stein, there is information concerning papers preserved in family archives.

*Norway.* By an exchange of Notes dated April 27, 1906, between the Norwegian Chargé d'Affaires and the Swedish Minister for Foreign Affairs, it was agreed that the diplomatic archives relating exclusively to Norwegian affairs should be handed over to the Norwegian authorities. Norwegian government offices preserve their own documents until, after the lapse of a convenient time, they are transferred to the Riksarkivet (State Archive Office). Treaties and other agreements with foreign countries are preserved at the Ministry for Foreign Affairs.

*Russia.* At p. 819 Langlois and Stein give a list of private archives and publications based on them, as well as of the publications of the Société impériale historique russe de Saint-Petersbourg (generally cited as Sbornik). There is also F. de Marten's *Recueil des traités et Conventions* with Austria, England, France and Germany.

*Switzerland.* The Archives fédérales are centralized at Berne, but only for the period beginning 1798. Nearly every canton possesses its own archives. Those of Aarau contain part of the old archives of the confederation, but very few documents relating to foreign affairs. The Bâle archives abound in papers of the highest interest. At the Hôtel de Ville at Geneva there is a rich collection bearing the name of "Porte-feuille historique." Lucerne possesses a considerable number of documents relating to foreign affairs, as does also Neuchâtel. Schaffhausen archives are important

for the history of foreign relations in the sixteenth and seventeenth centuries, likewise Soleure, which for a long time was the place of abode of the French diplomatic representative ; so also Zürich.

[The materials of these paragraphs are mostly drawn from Langlois and Stein, *Les archives de l'histoire de France*.]

§ 20. In Germany the title of the Minister for Foreign Affairs is Reichsminister des Auswärtigen. The Chancellor of the Reich is not necessarily the Minister for Foreign Affairs.

In the United States the title is the Secretary of State (see § 15).

In Austria the Minister for Foreign Affairs is sometimes the State Chancellor.

The Spanish title is Ministro de Estado.

In France it is Ministre des Affaires Etrangères.

In Great Britain the title is Secretary of State for Foreign Affairs.

Italy, Ministro degli Affari esteri.

Japan, Gai-mu Dai-jin = Minister of Foreign Affairs.

In Russia, the Minister is styled "The People's Commissary for Foreign Affairs."

In Turkey, the Grand Vizier is sometimes also Minister for Foreign Affairs.

## CHAPTER IV

### PRECEDENCE AMONG STATES AND SIMILAR MATTERS

§ 21. Precedence among sovereigns in the early sixteenth century—  
§ 22. Bull of Leo X—§ 23. Claims to precedence of various sovereigns—§ 24. Portugal and England—§ 25. Suggestion of principle of relative antiquity—§ 26. French claim to precedence over Spain—§ 27. Fracas between French and Spanish ambassadorial coaches in London in 1661—§ 28. Dispute between French and Russian ambassadors—*Footnote*, State entry of Nicolò Tron, London, 1715—§ 29. Czernichew and du Châtelet-Lomon—§ 30. Russian and French equality established by the Peace of Tilsit—§ 31. Pombal's attempt to regulate precedence—§ 32. Settlement at Vienna in 1815—§ 33. *Alternat*—§ 34. Dispute between France and Sweden in 1631—§ 35. Other cases—§ 36. Elaborate arrangements in 1718—§ 37. *Règlement* at Cambray in 1724—§ 38. Arrangement at Teschen in 1779—§ 39. Expedient sometimes adopted in the signature of Treaties—§ 40. Modern practice.

§ 21. THE list of sovereigns frequently attributed to Pope Julius II in 1504<sup>1</sup> was never promulgated by him. But in that year Paris de Grassis of Bologna became one of the two masters of ceremony of the papal chapel. At the beginning of a diary kept by him occurs the list, which with some variations has been regarded as a regulation intended to settle disputed questions of precedence. It formed part of a passage relating the reception on May 12, 1504, of the *ambassade d'obédience*, from the King of England, and is as follows :—

Ordo Regum Christianorum.

Imperator Cæsar,  
Rex Romanorum,

<sup>1</sup> And erroneously credited to him in our first edition, on the authority of Pradier-Fodéré, i, 87.

Rex Franciæ,  
 Rex Hispaniæ,  
 Rex Aragoniæ,  
 Rex Portugalliæ,  
 Rex Angliæ, cum tribus discors prædictis,  
 Rex Sicilæ, discors cum rege Portugalliæ,  
 Rex Scotiæ et Rex Ungariæ inter se discordes,  
 Rex Navarræ,  
 Rex Cipri,  
 Rex Bohemiæ,  
 Rex Poloniæ,  
 Rex Daniæ,

Ordo Ducum.

Dux Britanniæ,  
 Dux Burgundiæ,  
 Dux Baviariæ, comes Palatinus.  
 Dux Saxonæ,  
 Marchio Brandenburgensis,  
 Dux Austriæ,  
 Dux Sabaudia,æ,  
 Dux Mediolani,  
 Dux Venetiarum,  
 Duces Baviariæ,  
 Duces Franciæ et Lotharingiæ,  
 Dux Borboniæ,  
 Dux Aurelianensis, Isti quatuor non præstant  
 obedientiam Sedi Apostolicæ quia subditi imperatoris  
 sunt,  
 Dux Januæ,  
 Dux Ferrariæ,<sup>1</sup>

On the occasion referred to the English Ambassador having styled his sovereign King of England, of France and of Ireland, the French Ambassador rose and protested, but the Pope appeared to pass over the point

<sup>1</sup> Paris de Grassis Brit. Mus., *Diarium*, MSS. 8440, 8444, quoted by E. Nys, *Revue de Droit International et Legislation comparée*, xxv. 515.

in dispute. The list shows that in 1504 there was also a dispute about precedence between the crowns of England and Portugal.

§ 22. A bull of Leo X dated March, 1516, uses the following language :—

“ Christianissimo in Christo filius noster, Maximilianus, in imperatorem electus, Julii II prædecessoris nostri, nostro vero tempore, clarissimæ memoriæ, Ludovicus Francorum et ceteri reges Christiani. . . Laterensi concilio adhæserunt,”<sup>1</sup> which shows that the king of France enjoyed precedence over all other kings.

§ 23. Gustavus Adolphus asserted the equality of all crowned heads, Queen Christina maintained it at the congress of Westphalia, and in 1718 it was claimed for Great Britain on the occasion of the Quadruple Alliance.

§ 24. Of the dispute between Great Britain and Portugal we find a trace in the Quadruple Alliance of May 16, 1703, when the plenipotentiaries of these two Powers signed separate originals of the instrument, *vitandæ controversiæ causa quæ est de loci prærogativa inter Coronas Britannicam et Lusitanam, pro more consuetudineque inter utramque coronam observata*.<sup>2</sup> It seems that Portugal claimed at least equality with England. In 1763, the King of Portugal acceded to the peace of Paris, concluded between Great Britain, France and Spain ; on that occasion in order not to delay the conclusion of the treaty, the Portuguese claim to “ alternate ” with Great Britain and France was conceded, but the Portuguese ambassador had to sign an undertaking that this complaisance on the part of those Powers was not to be made a precedent for the future.<sup>3</sup>

§ 25. It has also been suggested that a proper principle to be adopted in establishing relative rank among crowned heads is the comparative antiquity of the royal title. The first place being conceded to the Pope, and the second, with universal assent, to the Emperor, up

<sup>1</sup> de Maulde la Clavière, 2nd part, i. 65.

<sup>2</sup> Lamberty, 2nd edit., ii. 501.

<sup>3</sup> Jenkinson, iii. 201.

to the fall of the Holy Roman Empire in 1806, the following would be the order of the others<sup>1</sup>—

France (accession of Clovis, A.D. 481, besides the rank derived from the character of “ eldest son of the Church ” attributed to the King of France).

Spain (kingdom of the Asturias in 718).

England (Egbert, 827).

Austria (Hungary a kingdom since 1000).

Denmark (Canute, 1015).

Two Sicilies (Norman kingdom, 1130).

Sweden (1132, reunion of the kingdoms of the Swedes and Goths).

Portugal (Affonso I, in 1139).

Prussia (kingdom, January 11, 1701)

Italy (kingdom of Sardinia, 1720).

Russia (assumption of the title of Emperor, October 22, 1721).

Bavaria (December 26, 1805).

Saxony (December 11, 1806).

Württemberg (December 26, 1806).

Hanover (October 12, 1814).

Holland (May 16, 1816).

Belgium (July 2, 1831).

Greece (May 7, 1832).

Turkey (“ admitted to share in the advantages of European public law and concert,” by the Treaty of Paris, March 30, 1856).

§ 26. In 1564, Pius IV declared that France was entitled to precedence over Spain, in a question respecting the relative rank of the ambassadors of the two Powers at Rome.<sup>2</sup> Philip II was deeply offended by this decision. The point was not finally settled until nearly a century later. In 1633,<sup>3</sup> Christian IV of Denmark having proposed to celebrate the wedding of his son, the Crown

<sup>1</sup> García de la Vega, 1873, 525.

<sup>2</sup> Flassan, ii. 66 ; Prescott, *Philip II* (edit. of 1855), 233, says it was Pius V.

<sup>3</sup> Flassan, iii. 13.



prince, a dispute arose between the French and Spanish ambassadors, the Comte d'Avaux and Don Gasparo de Teves y Guzman, Marques de la Fuente. The Danish ministers proposed to d'Avaux various solutions of the difficulty, and among these that he should sit next to the King, or next to the Imperial ambassador. To this he replied : " I will give the Spanish ambassador the choice of the place which he regards as the most honourable, and when he shall have taken it, I will turn him out and take it myself." His rival, having heard that d'Avaux was determined to assert precedence over him, no matter where, spread abroad a report that he had been recalled by the King his master, on account of urgent business, which did not admit of his remaining until the day of the wedding. He then went to take leave of the King, and paid a farewell visit to d'Avaux, without showing any signs of temper, and took ship for his own country.

In 1657 a contest of the same kind occurred between de Thou, special ambassador to the Hague, and the Spanish ambassador Gamarra.<sup>1</sup>

§ 27. A more serious affair happened in London on September 30, 1661, on the occasion of the state entry of the Swedish ambassador. It was the custom at such " functions " for the resident ambassadors to send their coaches to swell the cortège. The Spanish ambassador de Watteville sent his coach down to the Tower wharf, whence the procession was to set out, with his chaplain and some of his gentlemen inside, and a train of about forty armed servants. The coach of the French ambassador, Comte d'Estrades, with a royal coach for the accommodation of the Swedish ambassador, were also on the spot. In the French coach were the son of d'Estrades with some of his gentlemen, escorted by 150 men, of whom forty carried firearms. After the Swedish ambassador had landed and taken his place in the royal coach, the French coach tried to go next, and on the

<sup>1</sup> Lefèvre-Pontalis, *Jean de Witt*, i. 245 ; Chappuzeau, *L'Europe Vivante*, cited by D. J. Hill, *Hist. of European Diplomacy*, iii. 26.



Spaniards offering resistance, the Frenchmen fell upon them with drawn swords and poured in shot upon them. The Spaniards defended themselves, hamstringed two of the Frenchman's horses, mortally wounded a postilion and dragged the coachman from his box, after which they triumphantly took the place which no one was any longer able to dispute with them.<sup>1</sup> Louis XIV, on learning of this incident, ordered the Spanish ambassador to quit the kingdom, and sent instructions to his own representative at Madrid to demand redress, consisting of the punishment of de Watteville and an undertaking that Spanish ambassadors should in future yield the *pas* to those of France at all foreign courts. In case of a refusal a declaration of war was to be notified. The King of Spain, anxious to avoid a rupture, recalled de Watteville from London, and despatched the Marques de la Fuente to Paris, as ambassador extraordinary, to disavow the conduct of de Watteville and to announce that he had prohibited all his ambassadors from engaging in rivalry in the matter of precedence with those of the Most Christian King.<sup>2</sup> The question was finally disposed of by the "Pacte de Famille" of August 15, 1761, in Article XXVII of which it was agreed that at Naples and Parma, where the sovereigns belonged to the Bourbon family, the French ambassador was always to have precedence, but at other courts the relative rank was to be determined by the date of arrival. If both arrived on the same day, then the French ambassador was to have precedence.<sup>3</sup>

<sup>1</sup> Evelyn's report to Charles II, printed in H. B. Wheatley's edition of the *Diary of John Evelyn*, ii. 486. This is a better statement of the facts than that given in *Pepy's Diary* under the date of September 30, 1661. The other accounts, which suggest that the two ambassadors were present, are manifestly incorrect.

<sup>2</sup> The Spanish declaration presented by de la Fuente, Paris, March 24, 1662, is in Dumont, vi, pt. ii., p. 403.

<sup>3</sup> Flassan, vi. 314. The custom of sending a coach to form part of the procession in honour of a newly arrived ambassador is frequently mentioned in the *Original Letters of H.E. Sir Rd. Fanshaw*, 203, 233, 346.

In the *Nozze Busnelli-Ballarín* there is an interesting account of the public entry into London of the Venetian ambassador, Nicolò Tron,

§ 28. Similar rivalry occasionally manifested itself between the Russian and French ambassadors. The latter had instructions to maintain their rank in the diplomatic circle by all possible means, and to yield the *pas* to the papal and imperial ministers alone. On the other hand, Russia had not ordered hers to claim precedence over the French ambassador, but simply not to concede it to him. However, the French ultimately obtained the first place on all solemn occasions.<sup>1</sup>

§ 29. At a court ball in London, in the winter of 1768, the Russian ambassador, Iwan Czernichew, arriving first, took his place immediately next to the Count von Seilern, ambassador of the Emperor, who was on the first of two benches arranged in the diplomatic box. The French ambassador, Comte du Châtelet-Lomon, came in late, and climbing on to the second bench, managed to slip down between his two colleagues. A lively interchange of words followed, and in the duel which arose out of the incident the Russian was wounded.<sup>2</sup> Flassan offers the opinion that he was in the wrong, as Catherine II,

on August 27, 1715. Leaving his house at nine o'clock in the morning, he drove with his suite *incogniti* in hired carriages to the Tower, whence they were conveyed to Greenwich in boats furnished by the Master of the Ceremonies. Greenwich was the point from which these public entries commenced. There they waited, at a house previously hired by the ambassador, for the arrival of the Master of the Ceremonies and the Earl of Bristol, who had been deputed by the King to accompany the *cortège* to London. After refreshments had been served, the party embarked in royal barges, and were rowed to the Tower, where they disembarked. Here two of the royal carriages and one of the Prince of Wales were standing ready, and three belonging to the ambassador. The moment the procession started, a salute was fired by the Tower artillery. It was headed by the carriage of Lord Bristol, next came twenty of the ambassador's footmen, a squire on horseback and six pages on foot, then the two royal coaches and the coach of the Prince of Wales, the ambassador's three carriages, the first of which was drawn by eight horses, followed by the coaches-and-six belonging to a small number of peers. In this style the ambassador was conveyed to his residence in St. James' by seven o'clock in the evening. The other foreign ambassadors did not send their coaches on this occasion. The public audience of the ambassador took place on September 2, with great pomp and ceremony, and he was afterwards presented to the Prince and Princess of Wales. It appears that the King's reply to the ambassador was read in French by the Master of the Ceremonies.

<sup>1</sup> Flassan, vii. 26.

<sup>2</sup> *Ibid.*, vii. 376.

in her declaration of 1762 to the diplomatic corps respecting her title to be addressed as Imperial Majesty, had said that it "n'apportera aucun changement au cérémonial usité entre les cours, lequel restera sur le même pied." Somewhat later, at Vienna in 1784, the French ambassador, M. de Noailles, informed Prince Kaunitz that he would not appear at court until he received instructions how he was to comport himself towards the Russian ambassador. The Viennese court appeared inclined to adopt the *pêle-mêle*, or confusion of ranks, at public ceremonies. It was asserted that Russian ministers had orders never to quit a place they had once occupied.

§ 30. It was only at the Treaty of Tilsit, in 1807, that Russia attained complete equality with France. Article 28 runs—

"Le cérémonial des deux Cours de St. Pétersbourg et des Thuilleries entr'elles et à l'égard des ambassadeurs, ministres et envoyés qu'elles accrediteront l'une près de l'autre, sera établi sur le principe d'une réciprocité et d'une égalité parfaites."<sup>1</sup>

§ 31. Pombal, the celebrated Prime Minister of Portugal, in 1760, in order to revenge himself on the French ambassador Comte de Merle, whom he had tried in vain to get recalled, devised a scheme for upsetting the established order among crowned heads, and the relative rank of ambassadors depended on it. On the occasion of the marriage of the Princess of Brazil he caused a circular to be addressed to the foreign representatives, announcing the ceremony, and acquainting them that ambassadors at the court of Lisbon would thenceforth rank, when paying visits and having audiences granted to them, according to the date of their credentials. Pombal excepted the papal nuncio and the imperial ambassador, and the new regulation was to apply only to those of France, England, Spain, etc., so

<sup>1</sup> F. de Martens, xiii. 319.

that an ambassador of the Netherlands, or even of the republic of Venice, would rank before the French ambassador if his credentials were older. Merle replied that he regarded his right to take precedence of Lord Knowles, who had arrived at Lisbon later than himself, not as the consequence of the priority of his credentials, but as essentially inherent in the dignity of the sovereign whom he represented. Choiseul, the French Minister for Foreign Affairs, when the matter was referred to him, maintained that "the King would not give up the recognized rank due to his crown, and his Majesty did not think that the date of credentials could in any case or under any pretext weaken the rights attaching to the dignity of France." He added, in replying to representations made by the Portuguese minister at Paris, that though kings were doubtless masters in their own dominions, their power did not extend to assigning relative rank to other crowned heads without the sanction of the latter. "In fact," said he, "no sovereign in a matter of this kind recognizes powers of legislation in the person of other sovereigns. All Powers are bound to each other to do nothing contrary to usages which they have no power to change. . . . Pre-eminence is derived from the relative antiquity of monarchies, and it is not permitted to princes to touch a right so precious. . . . The King will never, on any pretext, consent to an innovation which violates the dignity of his throne." Nor did Spain accord a more favourable reception to this new rule of etiquette, while the court of Vienna, though the imperial rights had been respected, replied to Paris that such an absurdity only deserved contempt, and suggested consulting with the court of Spain in order to destroy the ridiculous pretension of the Portuguese minister.<sup>1</sup>

§ 32. Pombal's proposal consequently failed to succeed, and the question slept until 1814. At the Congress of Vienna the plenipotentiaries appointed a committee,

<sup>1</sup> Flassan, vi. 193.

which after two months' deliberation presented a scheme dividing the Powers into three classes, according to which the position of their diplomatic agents would be regulated. But as it did not find unanimous approval, especially with the rank assigned to the greater republics, they fell back upon the simple plan of disregarding precedence among sovereigns altogether, and of making the relative position of diplomatic representatives depend, in each class, on seniority, *i.e.* on the date of the official notification of their arrival. And in order to do away with the last relic of the old opinions that some crowned heads ranked higher than others, they also decided that : " Dans les actes ou traités entre plusieurs puissances qui admettent l'*alternat*, le sort décidera, entre les ministres, de l'ordre qui devra être suivi dans les signatures." <sup>1</sup>, <sup>2</sup>

§ 33. The *alternat* consisted in this, that in the copy of the document or treaty which was destined to each separate Power, the names of the Head of that State and his plenipotentiaries were given precedence over the others, and his plenipotentiaries' signatures also were attached before those of the other signatories. Thus each Power occupied the place of honour in turn.

§ 34. In drawing up the treaty of January 13, 1631, between Gustavus Adolphus and Louis XIII, the name of the latter had been placed first in both originals. The Swedish plenipotentiaries protested, and quoted the treaty of 1542 between Francis I and Gustavus Wasa, who had treated with the King of France on a footing of equality. The French negotiator Charnacé refused to admit the Swedish claim, whereupon Gustavus Adolphus wrote to Louis XIII, " qu'il ne pouvait pas s'imaginer

<sup>1</sup> It has been pointed out below, § 273, that though the *règlement* states that the order of signature shall be decided by lot, the signatures appended to that very document followed the alphabetical order of the French language, and the same procedure was adopted for the signature of the *acte final* of the Congress of Vienna.

<sup>2</sup> d'Angeberg, *Le Congrès de Vienne*, prem. part. 501, 503, 504, 612, 660, 735 ; deux. part. 932, 939.



que sa majesté ne consentît à lui accorder son amitié qu'aux dépens d'un honneur qu'il ne tenait que du ciel," and the matter was arranged in accordance with his wishes.

§ 35. England and France established the *alternat* between themselves in 1546,<sup>1</sup> but Charles IX refused to concede it to Queen Elizabeth in the Treaty of Blois of April 18, 1572. Henri IV observed it in 1596 when he contracted an alliance with her.<sup>2</sup> France did not, however, claim it in treaties with the Emperor, but where the latter concluded a compact otherwise than in his character of Emperor, *e.g.* on the occasion of the marriage of Marie-Antoinette with the dauphin, afterwards Louis XVI, the *alternat* was conceded, because her mother contracted as Queen of Bohemia. The kings of France constantly refused it to the courts of Berlin, Lisbon and Turin up to the end of the reign of Louis XVI.<sup>3</sup> The Emperor still withheld it from Russia during the reign of Joseph II.<sup>4</sup>

§ 36. When the accession of Philip V to the Quadruple Alliance of 1718 was recorded at the Hague, twelve copies of the protocol were signed, six for the Emperor, two each for Spain, France and England. The Emperor's plenipotentiary signed first in all, according to the following table—

By Spain.	Emperor, Spain, England, France.
„	Emperor, Spain, France, England.
By France.	Emperor, France, England, Spain.
„	Emperor, France, Spain, England.
By England.	Emperor, England, Spain, France.
„	Emperor, England, France, Spain.
For Spain.	Emperor, Spain, England, France.
„	Emperor, Spain, France, England.
For France.	Emperor, France, England, Spain.
„	Emperor, France, Spain, England.

<sup>1</sup> de Martens-Geffcken, ii. 134 n.

<sup>3</sup> García de la Vega, 1873 edit. 253.

<sup>2</sup> Pradier-Fodéré, i. 108.

<sup>4</sup> Holtzendorf, iii. 637.

For England.	Emperor, England, Spain, France.
„	Emperor, England, France, Spain.

So that, the primacy of the Emperor being recognized, the other three Powers admitted the *alternat* among themselves.

§ 37. At the Congress of Cambray, in a *règlement* adopted April 24, 1724, for the purpose of avoiding all delay in the signature of the expected treaties (which, however, were never concluded) it was provided that as many originals should be prepared as would be needed by the Powers, who should sign alternatively, but the Emperor's ambassadors were to sign first in all of them, and those of the other Powers in the order previously adopted at the Hague.<sup>1</sup>

§ 38. In 1779, at the Treaty of Teschen, the *alternat* was observed between the French and Russian courts.<sup>2</sup> Though the regulation of Vienna speaks only of its applicability to the case of treaties between several Powers, the rule is also observed in treaties between two parties only. At Hubertusburg, in 1763, Collenbach, the Austrian negotiator, claimed that precedence should be given to the Empress Maria-Theresa in the Prussian as well as in the Austrian copy of the treaty. Herzberg, the Prussian plenipotentiary, objected, but on referring the point to Frederick the Great, he was instructed not to weary his master with letters on trifles of secondary importance, and was told by the minister Finckenstein to adhere to the practice observed in previous treaties, *i.e.* concede precedence to the Empress.<sup>3</sup>

§ 39. It was doubtless in order to avoid disputes about the *alternat* that on some occasions the practice was substituted of the plenipotentiaries signing only the copy intended for the other party, as in the case of the Treaty of Westminster of January 16, 1756, between George

<sup>1</sup> Rousset, t. 3 (c) 418.

<sup>2</sup> de Martens-Geffcken, ii. 133 n.

<sup>3</sup> Schäfer, iii. 681.



II and Frederick the Great,<sup>1</sup> and in other instances quoted below.<sup>2</sup> Klüber (*Acten des Wiener Congresses*, Bd. vi. 207) says that at the congresses of Utrecht (1713) and Aix-la-Chapelle (1748) each of the high contracting parties delivered to each of the others an instrument signed by himself alone. At Teschen, the Elector Palatine refused to accord the *alternat* to the Elector of Saxony. The difficulty was avoided by stating in the preamble of the convention concluded between them that: "Les Sérénissimes Parties Contractantes pour la succession allodiale du dernier Electeur de Bavière étant convenues, etc., par les soins et sous la garantie des hautes Puissances Médiatrices, de même que sous celles des hautes Puissances Contractantes du traité de paix de ce jour, ont pourvu à cet effet des pleins-pouvoirs nécessaires leurs Plénipotentiaires au Congrès de Teschen, lesquels après les avoir échangés ont arrêté les articles suivants." The names of the respective plenipotentiaries were not inserted, but they each signed separate originals, which were then exchanged. The four Powers who were to guarantee the convention were also not mentioned by name, but merely described as "puissances médiatrices et contractantes" in order to show the two Electors that there was nothing derogatory to their dignity in not being mentioned by name. The adoption of this expedient is explained in a letter of 16/27 April from Prince Repnin to the Russian ambassador at Vienna;<sup>3</sup> he also states that a similar instance occurred in 1731 with respect to a convention between Hanover and Saxony.<sup>4</sup> But the Saxon minister

<sup>1</sup> The text of this treaty shows that the intention of the draughtsman was that each copy should be signed by both parties.

<sup>2</sup> Treaty of Portugal with the Grand Alliance of 1703, Treaty of Belgrade. The Anglo-Russian Treaty of 1741 was drawn up in French and Russian. Finch signed the French text, Ostermann, Cherkaski and Golovkin the Russian. (F. de Martens, *Recueil* ix. (x) 105.) The Convention of alliance of 28 (17) Oct. 1715 between George I and Peter the Great was in two copies, one signed by the British, the other by the Russian plenipotentiaries, and then exchanged (*ibid.*, 35).

<sup>3</sup> *Sbornik*, etc., lxx. 474.

<sup>4</sup> *Ibid.*, 477

Stutterheim explained that the convention of 1731 was concluded between the kings of Poland and England ; otherwise Hanover always yielded precedence to Saxony.<sup>1</sup>

§ 40. The Holy Roman Empire having come to an end, in July 1806, in consequence of the establishment of the Confederation of the Rhine, the precedence over other sovereigns formerly enjoyed by the German Emperor also disappeared, and could not be claimed by the Emperor of Austria, whose title in 1815 was only eleven years old. Nor was France at that time in a position to reassert her claims to rank before the rest of the Powers. It may fairly be inferred that from this date the equality in point of rank of all independent sovereign states, whether empires, kingdoms or republics, has been universally admitted, and it is improbable that any instances of the refusal of the *alternat* in connexion with modern treaties are to be found.

<sup>1</sup> *Ibid.*, 496.

## CHAPTER V

### TITLES AND PRECEDENCE AMONG SOVEREIGNS

§ 41. The title of "Majesty"—§ 42. Controversy between German Emperor and Tsar of Moscow—§ 43. Titles of the Pope and other exalted personages—§ 44. Titles of Empresses, Queens and others—§ 45. Titles of various sovereigns—*Footnote*, "Emperor of Germany," not correct—§ 46. *Altesse*—§ 47. "Erlaucht"—§ 48. Courtesy titles of sovereigns who have ceased to reign—§ 49. Titles of republics and presidents—§ 50. Designations of certain sovereigns granted by the Pope—§ 51. Assumption of a new title—§ 52. By the Tsars of Russia—*Footnotes*, Lord Whitworth's speech to Peter the Great, and Réversale given to Prussia—§ 53. Recognition of Peter the Great as Emperor by various states—§ 54. Recognition by France and Spain—§ 55. Dispute in Peter III's time—§ 56. Dispute in the time of Catherine II—§ 57. Catherine II's *déclaration*—§ 58. French counter-declaration—§ 59. Russian protest in 1765 against omission of "*impériale*"—§ 60. Assumption of kingly title by the Elector of Brandenburg—§ 61. Ditto by various electors—§ 62. Assumption of titles at Vienna in 1815—§ 63. Refusal of kingly title to Elector of Hesse-Cassel in 1818—§ 64. Title of King of Italy—§ 65. Assumption of imperial title by Napoleon III—§ 66. Assumption of kingly title by Balkan sovereigns—§ 67. *Grand titre*, *titre moyen* and *petit titre*—§ 68. Address of "Monsieur mon Frère"—§ 69. Refusal of this form to Louis Napoleon by the Emperor of Russia—§ 70. Examples of variation—§ 71. Titles of heirs-apparent—§ 72. Precedence among sovereigns—no rule exists—§ 73. Precedence of princes at Inauguration of Leopold II in 1865—§ 74. At Queen Victoria's Jubilee in 1897—§ 75. Correspondence of sovereigns—§ 76. Coronation of sovereigns—§ 77. Exchange of decorations—§ 78. Position of an ex-president travelling abroad.

§ 41. *The title of "Majesty."*

Originally this title belonged to the Emperor alone, who in speaking of himself said: "Ma Majesté." Kings were styled "Highness," or "Serenity." In very early charters the titles *Altitudo*, *Illuster* (for *illustris*) and *Nobilissimus* occur in mentioning the Emperor, and the last of these was given to the King of France until the twelfth century. Sons of emperors were styled *Nobilissimus* or *Purpuratus*.<sup>1</sup> Since the end of the fifteenth

<sup>1</sup> De Maulde-la-Clavière, 289.

century other crowned heads have successively assumed it, the kings of France setting the example. Then it was adopted by King John of Denmark (1481-1513); in Spain by Charles I (V, as Emperor); in England under Henry VIII, by Portugal in 1578.<sup>1</sup> England and Denmark mutually applied it in 1520, Sweden and Denmark in 1685. France first accorded it to the King of Denmark at the beginning of the eighteenth century, and in 1713 to the King in Prussia, whose kingly title dated only from 1701. The Emperor gave it to the King of France at the Peace of Westphalia in 1648, and soon afterwards to other kings. The unfortunate Emperor Charles VII accorded it to all kings without distinction.

§ 42. A long controversy was carried on between the German Emperors and the Tsars of Moscow with respect to the claim of the latter to be addressed as "Majesty." It is stated that up to 1600 the Emperors in their written communications to the Tsars spoke of them by this title, but in that year Rudolph II addressed Boris Godounoff simply as "Serenitas." In 1658 envoys of Leopold I arrived at Moscow bringing a rescript in which the title "Seigneurie" was used. On their departure a similar document was handed to them in which the Tsar, instead of addressing the Emperor as "Majesty," entitled him "Seigneur Roi," but they refused to receive it. A dispute of the same nature arose in 1661, when other imperial envoys again applied the title "Seigneurie" to the Tsar. But, on the original rescript of the Emperor Maximilian, of 1514, being shown to them, in which the imperial title was mentioned, they consented to use the word "Majesté" in their negotiations. In 1675 other envoys of Leopold I arrived at Moscow with the object of concluding an offensive and defensive alliance with the Tsar. The Russian plenipotentiaries, before entering on the negotiation, demanded the signature of a sort of protocol of the discussion that had taken place between

<sup>1</sup> de Martens-Geffcken, ii. 25; Pradier-Fodéré, i. 67.

them and the imperial envoys on this point, and also as to the refusal of the Imperial Chancery to let the *récréances* be delivered by the Emperor in person to Russian envoys, instead of their transmission through a secretary. This document was signed in German and Russian, and in the preamble the *alternat* was observed ; for while in the Russian text the name of the Emperor and his envoys are placed first, the German text gives the place of honour to the Tsar and his plenipotentiaries. This protocol did not, however, settle the questions in dispute, and when some Russian envoys at Vienna, in 1686, proposed to conclude a formal convention respecting the title of " Majesty," they met with a categorical refusal.<sup>1</sup>

§ 43. The Pope's title of courtesy is Most Holy Father, *Très Saint Père*, also *Vénérable*, or *Très Vénérable, Père*, Holiness, *Sainteté*, or *Béatitude*, and a Catholic sovereign, in addressing him by letter, will sign *dévoué*, or *très-dévoué, fils*. He in turn writes to them as *Carissime in Christo Fili*, or *Dilectissimo in Christo Fili*, in Italian *Dilettissimo, Carissimo Figlio*, even when the text of the letter is in French. To emperors *Sire* and *Majesté Impériale* are used. Kings are addressed as *Sire* and *Majesté*. For other sovereign princes entitled to royal honours *Monseigneur* and *Altesse Royale*, for those who do not enjoy them *Monseigneur* and *Altesse Sérénissime*. For the heir-presumptive of an imperial or royal crown, *Monseigneur* and *Altesse Impériale*, or *Royale*, as the case may be ; so also for sons or brothers of the sovereign, for his uncles and first cousins. For the other princes of a sovereign family, and even for the German mediatized princes, *Monseigneur* and *Altesse Sérénissime*. In Spain (and formerly in Portugal), with the exception of the heir-presumptive, the princes and princesses receive only *Altesse Sérénissime*. Austrian archdukes up to 1806 were only *Royal Highnesses* ; they were afterwards styled *Imperial Highness*.<sup>2</sup>

<sup>1</sup> F. de Martens, i. 2.

<sup>2</sup> de Martens-Geffcken, ii. 26.

§ 44. The same titles of courtesy are given to empresses, queens and all other princesses, according to their birth or the rank of their husbands, with *Madame* instead of *Sire*. When a princess entitled by birth to be called *Altesse Impériale*, or *Royale*, marries a prince who has not that title, she continues to be addressed by it; but with this exception, princesses bear the same titles and appellatives as their husbands, unless a different rule has been established by convention.

Princes sprung from royal houses who are not sons or grandsons of reigning kings, and all other members of sovereign princely houses, to whom the title of *Altesse Royale* has not been expressly accorded, are styled *Altesse Sérénissime*.

§ 45. The German Emperor was *Majesté Impériale et Royale*. The title of the Emperor of Austria was *Empereur d'Autriche, Roi apostolique de Hongrie*. The Emperor of Russia was *Empereur et Autocrate de toutes les Russies*.<sup>1</sup> The Russian title Tsar was not to be used in speaking of him officially. The King of England is "King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, Defender of the Faith, Emperor of India." The Emperor of Japan is styled *Tennô* in the Japanese language. The title *Mikado*, by which he is sometimes spoken of by European writers, is antiquated, and its use is not desired.

§ 46. The title of *Altesse* (Highness), which at the outset was given principally to Italian sovereign Princes, and in Germany to the Electors, as well as to reigning Dukes and Princes, was borne later by Princes on whom the German Emperor<sup>2</sup> had conferred it. Although the

<sup>1</sup> *Almanach de Gotha*, 1914.

<sup>2</sup> "Emperor of Germany," though often found in historical works applied to the head of the Holy Roman Empire, and even "German Emperor," were probably only convenient corruptions of the proper title (Bryce, *Holy Roman Empire*, lib. edit., 1889, p. 305). From the eleventh to the sixteenth century, that was, until his coronation, *Romanorum rex semper Augustus*, and after the ceremony, *Romanorum Imperator semper Augustus*. In 1508 Maximilian obtained a bull from



German title *Hoheit* corresponds literally to *Altesse*, it has now become, since the decision taken at one of the sittings of the so-called Congress of Aix-la-Chapelle of 1818, a title intermediary between *Altesse Royale* and *Altesse Sérénissime*; but *Hoheit*, when applied to a prince of an imperial or royal family, was always accompanied by *kaiserliche* or *königliche*. By itself *Hoheit*, which implies a sort of superiority to *Durchlaucht*, was adopted in 1844 by reigning princes of the ancient ducal families of Germany, such as those of Saxony, Anhalt, Nassau and Brunswick, in distinction to *Durchlaucht* (likewise signifying *Altesse*), which was borne by sovereign princes (not of ancient descent) of Germany, as well as by high civil or military functionaries on whom, being already princes, it has been conferred by their sovereign.

§ 47. By a decision of the German Diet of February 15, 1829, the qualification of *Erlaucht* was granted to the ancient families of the German counts mediatised after the dissolution of the empire in 1806.<sup>1</sup> A list of such families may be found in part 2 of the *Almanach de Gotha*.

§ 48. Emperors and kings who have ceased to reign in consequence of their abdication or for other reasons continue to receive the title of " Majesty " from friendly sovereigns. The Treaty of Paris of April 11, 1814, provides that their Majesties the Emperor Napoleon and the Empress Marie-Louise shall preserve these titles and qualities.<sup>2</sup>

§ 49. The titles formerly accorded to certain republics have become obsolete. The States-General of the United Provinces of the Netherlands were addressed as " Their High Mightinesses " (*Hautes Puissances*), and in the letters written to them by sovereigns they were addressed

Julius II permitting him to call himself *Imperator electus*. This became till 1806 the strict legal designation, though the word " elect " was often omitted [*Ibid*, 432].

<sup>1</sup> de Martens-Geffcken, ii. 27 n.

<sup>2</sup> *Ibid.*, 28.



as *Très-cher amis*, or *Chers et bons amis et alliés*. The President of the United States of America and of the French Republic are addressed as "Great and Good Friend" and the Executive Council of the Swiss Confederation as *Très-chers et bons amis et alliés*.<sup>1</sup> Before the change of constitution in 1848 the credentials given by the King of France to his ambassador to Switzerland began: "A nos très-chers, grands amis et alliés et confédérés le président et députés des vingt-deux cantons composant la diète helvétique: Nous avons nommé M. . . . pour résider près les louables cantons composant la Confédération helvétique."<sup>2</sup>

§ 50. In former times the King of France was designated "le Roi Très-chrétien" (Most Christian King), and the King of Portugal "le Roi Très-fidèle" (Most Faithful Majesty) since 1748. The King of Spain is "le Roi Catholique" (His Catholic Majesty) since 1496<sup>3</sup>, the sovereign of Austria-Hungary was "His Imperial and Royal Apostolic Majesty" since 1758. These titles were conferred by various Popes. Leo X bestowed that of "Fidei Defensor" (Defender of the Faith) on Henry VIII in 1521, and his successors have continued to bear this title. The other titles mentioned were never employed by the sovereigns themselves; it was, or is, only in addressing or speaking of them that they were or are used.

§ 51. *Assumption of a new title by a crowned head.* Since the Popes and the Emperors of the Holy Roman Empire ceased to grant the title of king to other potentates, European Powers have adopted the principle that the title taken by the head of a state cannot of itself give rise to any sort of precedence over other crowned heads, and that the latter can either recognize the new title, or refuse to do so, or recognize it on conditions.<sup>4</sup>

<sup>1</sup> de Martens-Geffcken, ii. 25-29.

<sup>2</sup> d'Haussonville, ii. 364 n.

<sup>3</sup> See Prescott, *Ferdinand and Isabella*, 8th edit. ii. 254. But it had been given to the Austrian Prince Alfonso I about the middle of the eighth and to Pedro II of Aragon at the beginning of the thirteenth century (*ibid.*).

<sup>4</sup> Ch. de Martens, ii. 89.

§ 52. In early times the Russian sovereigns bore the title of Autocrator, Magnus Dominus, Grand-Prince, or Czar (Tsar), the last being the Slav word for *King*. In the seventeenth century they began to make use of word *Imperator* in the Latin translations of official documents addressed to other Powers, and it was Peter the Great who, in 1721, after his victories over Charles XII, formally took the title of Emperor of Russia.<sup>1</sup> Notification was made of this fact to all the

<sup>1</sup> In 1675 envoys from the Emperor Leopold I [F. de Martens, vol. i. p. 2] arrived at Moscow to negotiate an offensive and defensive alliance with the Tsar. On this occasion the Russian plenipotentiaries appointed to treat with them raised two questions, (1) That whereas the Tsar received letters of credence of imperial envoys, and delivered to them the (*ré-créditif*) *lettres de récréance*, both with his own hand, the Emperor had omitted to do this, and had sent to the Tsar's envoys the *lettres de récréance* through a secretary, to be delivered to them at their lodging; and in one instance only, as a special favour, had caused them to be handed to the envoys by a minister in his presence; and they demanded that the Emperor should in future deliver such letters with his own hand. Failing an agreement, the Tsar would in future not deliver such letters, except through a minister.

The imperial envoys replied that the practice at both courts was in accordance with traditional custom. If the Tsar on the present occasion were to say that he would change the practice, they would prefer to depart without an audience to take leave and without *lettres de récréance*. What was done at the courts of other potentates could not bind the Emperor.

On this the Russian plenipotentiaries said that their sovereign would personally hand them their letters, but requested the envoys to lay the matter before the Emperor, and report that if in future H.I.M. did not adopt the practice observed at Moscow, the Tsar would follow the example of the Emperor, in order that the dignity of both potentates might be placed on a footing of equality.

The answer of the envoys was that the Tsar might write to the Emperor to this effect, and that they would report the matter to H.I.M. on their return home.

(2) The Russian plenipotentiaries complained that the Emperor had addressed the Tsar as "*Serenität*" instead of "*Majestät*," which was the title given to him by other Christian potentates. Letters of other sovereigns were exhibited to the envoys in proof of this assertion. They proposed, therefore, to enter into an arrangement by which the Emperor and his envoys should in future use "*Majestät*" in addressing the Tsar. Failing that, the Tsar would use "*Serenität*" in addressing the Emperor.

The envoys replied that the title "*Majesty*" belonged to the Roman Emperor exclusively, who gave to kings the title "*Serenität*" in accordance with the old and unalterable practice of the Imperial Chancery. They were surprised at this demand, seeing that the Tsar had for many years hitherto been contented with "*Serenität*" and, moreover, when the written copy of the speech to be delivered at their first audience had been sent in beforehand, no objection was raised to

ambassadors of foreign courts, which, however, did not at once decide to recognize the new title.

§ 53. Queen Anne was the first to do this in 1710 when she instructed Lord Whitworth to present an apology to Peter the Great for the insult committed against his ambassador Mathveof (Matveev) in 1708,<sup>1</sup> by his arrest and confinement in a sponging-house, at the suit of his creditors.<sup>2</sup>

Prussia made no difficulty about recognizing the new title.<sup>3</sup>

the use in it of "Serenität," and that it had been used at the audience. They could not enter into any arrangement as to the wording of Imperial letters, as they had no instructions, but they personally were willing to accord the title of "Majestät" to the Tsar in their own communications, provided it were without prejudice.

The Russian plenipotentiaries expressed themselves as satisfied with this compromise.

Throughout this curious document, which was framed by the Russians, the expressions "Zärische Majestät" and "Kaiserliche Majestät" are used for the respective sovereigns. Besides the German text, in which the name and titles of the Tsar are placed before those of the Emperor, there is a Russian text in which the order is reversed. The German text is signed first by the Imperial envoys, then by two of the Russian plenipotentiaries, and was the copy, binding the former, which was destined for the Moscow archives; the other has the signature only of the imperial envoys, but it was evidently the text by which the Russian Government would be bound. The difference of order in the two texts is in accordance with the practice known as the *alternat*.

<sup>1</sup> Lord Whitworth, envoy extraordinary at Petersburg, was appointed ambassador extraordinary for the purpose of conveying to Peter the Great at a public audience the expression of Queen Anne's regret for the insult offered to Mathveof, his representative in London. The Tsar's carver and cup-bearer proceeded to Whitworth's residence in a court carriage to fetch him to the audience, followed by twenty other coaches conveying court personages and the secretaries and gentlemen of the embassy. Lord Whitworth's speech, delivered in English, began with "Most High and Mighty Emperor," and in the course of it he managed to repeat the words "Your Imperial Majesty" no less than seven times, and "Your Majesty" four times (Ch. de Martens, i. 68).

<sup>2</sup> Ch. de Martens, i. 47. For a fuller account of Matveof's case, see F. de Martens, ix. (x), p. 16. In 1741 to the Treaty of Alliance between Ivan III and George II a separate article was annexed, promising to recognise the title of Emperor in the former and his successors (*ibid.*, p. 106).

<sup>3</sup> But see F. de Martens, v. 205, for the *réversale* given to Prussia on this occasion.

*Réversale* (the words in italics are in Roman and the rest in Gothic in the original printed text). *Ihro Kayserl. Majt* von aller Reüssen haben es als eine absonderliche *Marque Sr Königl. Majt* in Preüssen Freundschaft angenommen, dass dieselbe den *Ihro* von Alters her *competirenden Titul* von Kayser, nicht alleine erkennen, sondern auch

Sweden recognized it in 1723 and Denmark in 1732.  
The Republic of Venice in 1726.

By Saxony, Treaty of Alliance of 1733, Art. 7.

The Emperor Charles VII in 1744, as did also Francis I shortly after his election as *empereur d'Allemagne*; <sup>1</sup> and the words *Empire Russe* were employed in 1748.

Maria-Theresa gave the title *impérial* to Elisabeth in 1742, in the credentials of her envoy to the court of Russia, Marquis Botta d'Adorno.

In an agreement of September 8, 1741, between Russia and the Ottoman Porte, the latter undertook on all occasions to give the title of *Impératrice* to the *Czarina*.

The Republic of Poland only agreed to give the title of *Impératrice de toutes les Russies* in 1764, on condition that she should not lay any claim to Red Russia, she having in 1763 notified that she could not receive M. de Borch as ambassador of Poland, as long as the dispute as to the title of *Impérial* was not arranged.

§ 54. The French and Spanish courts did not accord the title of *Impératrice* to Elisabeth until 1743, and the former, at least, on condition of a *réversale*, undertaking that this should not make any difference in the ceremonial

Sr Kayserl. Majt in Dhero Hohen Nahmen dazu glückwünschen lassen wollen.

Ihro Kayserl. Majt lassen auch hiedurch SKr önlgl. Mt dafür verbündlichsten Danck abstatten, und dieselbe anbey aufs festeste versichern, dass sie Keinem andern gekrönten Haupte, wegen *agnoscirung* dieses Ihro zukommenden *Tituls* von Kayser sowohl ins gesambt, alss in besondere des *Rangs Ceremoniels*, und *Titulatur* halber nichts zum *praejudiz* Sr Königl. Majt in Preüssen einräumen, sondern darunter eine *exacte paritaet* zwischen Dehroselben, and allen andern Königen in *Europa conserviren* und unterhalten, auch Ihnen bey aller Gelegenheit eine Freüde seyn lassen werden, wann Sie zu Ihro Königl. Majt und Dehro Königl. Hausses weitem Aufnahm und Vernügen etwas beytragen können.

Welches Ihro Kayserl. Majt dem Königl. Preüssischen würklichen geheimbten Rathe und *Envoyé Extraordinaire* Hrn Baron von *Mardfeld* auff dessen *pro Memoria* in Antwort anzufügen aller gnädigst befohlen, und sind demselben übrigen mit aller Kayserl. Gnade und Hulde wohl beygethan.

Gegeben Mosco d. 26ten January 1722.  
(sans signatures)

<sup>1</sup> For the proper title see footnote derived from Bryce on p. 39.

observed between the two courts. The text of this document was as follows—<sup>1</sup>

Sa majesté le roi de France, par amitié et une attention toute particulière pour sa majesté impériale de toutes les Russies, ayant condescendu à la reconnaissance *de titre impérial*, ainsi que d'autres puissances le lui ont déjà concédé ; et voulant que ledit titre soit toujours donné et à l'avenir, tant dans son royaume que dans toutes les autres occasions ; sa majesté impériale de toutes les Russies a ordonné, qu'en vertu de la présente, il soit déclaré et assuré, que comme cette complaisance du roi lui est très agréable ; ainsi cette même reconnaissance du titre impérial ne devra porter aucun préjudice au cérémoniel usité entre les deux cours de sa majesté le roi de France, et de sa majesté impérial de toutes les Russies.

Fait à Saint-Peterbourg, le 16 de mars 1745.

Signé, Alexis, Comte de Bestucheff, et Rumin Mich, Comte de Woronzow.

§ 55. As the Gazette de France did not give to Peter III, who succeeded to the throne in January 1762, the title of emperor, but that of *czar*, the Russian minister in Paris, Czernichew, wrote to Count Choiseul-Praslin protesting. The latter replied that Peter the Great and his successors had never received any other title in France but that of *czar* ; the empress Elisabeth was the first to whom the title *impérial* had been accorded, but only on a formal condition, that of a *réversale* stipulating that this new title should not in any way affect (*n'apporterait aucun préjudice au*) the accustomed ceremonial between the two courts. The King had raised no difficulty about according the same title to her successor (Peter III), and the credentials of the French minister Breteuil were addressed to "the Emperor of all the Russias," but on condition of a similar *réversale*, or at least of a declaration that the former one still subsisted in all its force.<sup>2</sup>

§ 56. While this discussion was going on in Paris, the

<sup>1</sup> Flassan, v. 217.

<sup>2</sup> Flassan, vi. 332 ; Ch. de Martens, *Causes Célèbres*, ii. 89, and F. de Martens, xiii. 124 (the latter only a very sketchy account).



court of Petersburg delivered the required *réversale* to Breteuil, and the latter quitted Petersburg on June 25.<sup>1</sup> The revolution which raised Catherine II to the throne took place on July 14. Breteuil was reappointed to Petersburg, and arrived there September 4.<sup>2</sup> He began by demanding from the Chancellor Woronzow a *réversale* similar to those given by Elisabeth and Peter III. Woronzow replied to him that the Empress would probably refuse, and acquainted him at the same time that he was to have an audience on the morrow, along with the ministers of Sweden, Denmark, Holland and Prussia, doubtless hoping that if Breteuil postponed the repetition of his demand till after the audience, it would be easier to evade giving the *réversale*. But Breteuil was equal to the occasion, and declined to attend the audience. The French Government then proposed the signature of a convention, which would do away with the necessity of a new *réversale* on each occasion. But Catherine did not accept this expedient, and finally, on December 3, addressed a declaration to all the foreign ministers at Petersburg, including the French, worded as follows—

§ 57. Le titre impérial que Pierre-le-Grand, de glorieuse mémoire, a prit ou plutôt renouvelé pour lui et ses successeurs, appartient tant aux souverains qu'à la couronne et à la monarchie de toutes les Russies, depuis bien du temps. Sa majesté impériale trouve contraire à la stabilité de ce principe, tout renouvellement des réversales qu'on aurait données à chaque puissance, lorsqu'elle reconnut primitivement ce titre.

En conformité de ce sentiment, sa majesté impériale vient d'ordonner à son ministère, de faire une déclaration générale, que le titre d'*impérial*, par sa nature même, étant une fois attaché à la couronne et à la monarchie de Russie, et perpétué depuis de longues années et successions ; ni elle, ni ses successeurs à perpétuité, ne pourront plus renouveler les dites réversales, et encore moins entretenir quelque correspondance avec les puissances qui refuseraient de reconnaître le titre *impériale*, dans la personne des souverains de toutes les Russies, ainsi que dans leur couronne et leur monarchie.

<sup>1</sup> Flassan. vi. 339.

<sup>2</sup> *Ibid.*, 353.



Et pour que cette déclaration termine une fois pour toutes, les difficultés dans une matière qui n'en doit offrir aucune, sa majesté impériale, en partant de la déclaration de Pierre-le-Grand *déclare que le titre d'Impérial n'apportera aucun changement au cérémonial usité entre les cours, lequel restera sur le même pied.*

§ 58. Breteuil accepted this declaration, but the court of Versailles regarded it as too overbearing, and put forth a counter-declaration on January 18, 1763, which was published in the *Gazette de France*. Catherine had also resorted to a similar measure of publication.

The French document lays it down that—

“ 1. Titles are nothing in themselves. Their value lies in their being recognized.

“ 2. Sovereigns cannot give themselves whatever titles they choose; their acknowledgment by other Powers is necessary. Each crown can recognize or refuse to recognize a newly adopted title, and on such conditions as it finds convenient.

“ 3. In virtue of this principle Peter I and his successors down to the Empress Elisabeth were never known in France, but under the title of *czar*. She was the first to whom the king accorded the title of *impérial*, but on the express condition that it should not in any way affect the accustomed ceremonial between the two courts.

“ 4. The Empress Elisabeth subscribed to this condition without difficulty, admitting explicitly, by the *réversale* of March 1745, that it was by a particular act of attention on the part of the King of France that the title *impérial* was recognized.

“ 5. The King of France, animated by the same sentiments towards the Empress Catherine, makes no difficulty about now according to her the title *impérial* and recognizing it as attached to the throne of Russia. But His Majesty understands this recognition to be given on the same conditions as in the two preceding reigns, and he declares that, if hereafter any of the

successors of the Empress Catherine, forgetful of this solemn reciprocal engagement, should put forward any pretensions contrary to the usage constantly followed between the two courts, from that moment the Crown of France, by way of just reciprocity, would resume the style it had formerly employed, and would cease to give the title of *impérial* to that of Russia.

“ This declaration, which tends to forestall all subject of difficulty for the future, is a proof of the King’s friendship for the Empress and of his sincere and unalterable desire to establish a solid and unalterable union between the two courts.”

Catherine at first inclined to refuse reception of this declaration, then thought of issuing a reply. But Breteuil succeeding in persuading the two chancellors to see how absurd and unbecoming such a war of words would be.

§ 59. In 1765 Russia protested against the alleged omission of *impériale* after *majesté* in official documents.<sup>1</sup> The Duc de Choiseul, Minister for Foreign Affairs, consequently sent out a circular to French diplomatic agents explaining that in royal letters to the Emperor and Empress of the Romans the word *majesté* alone was used, without the epithet *impériale*, and that the same practice had been observed towards the *czars* and *czarinas*,<sup>2</sup> ever since the King had recognized their titles of *emperor* and *empress*; but by a clerical error in the letters addressed to Catherine II from her accession down to the mission of the Marquis de Bausset, the adjective had been conjoined. In his credentials the correct practice had been reverted to. The day after he presented his credentials, the Empress noticed the omission, and instructed the vice-chancellor to ask for an explanation. Bausset, not knowing the rule, explained that the superscription on the cover, *Impératrice de toutes les Russies*, was equivalent

<sup>1</sup> Flassan, vi. 531.

<sup>2</sup> This is an English rendering of *czarine*, a form invented in France to denote the consort of the czar (*tsar*). But the correct Russian word is *Tsaritsa*.

to *majesté impériale*, and that the omission was due to a mistake of the French Foreign Office. On his reporting this, he was informed that *he* was mistaken; that the King was not addressed as *votre majesté très-chrétienne*, and he was instructed to withdraw his letter to the vice-chancellor and to retract his explanation. On his proceeding to carry out this instruction, the vice-chancellor replied that the Empress would regret to be obliged in future to refuse acceptance of letters in which *impériale* was omitted after *majesté*. Explanations were also furnished to Galitzin, the Russian minister in Paris, who was told that if the Empress persisted, the King would neither write to her nor maintain a representative at her court.<sup>1</sup>

In 1772, Durand was sent to Petersburg to endeavour to settle this dispute. It was finally agreed that the two courts should write to each other in Latin. France would use *imperialis* in the body of letters to Russia, and Russia would use *regia* in reply. Durand delivered his credentials, and harmony was restored.

§ 60. The Elector of Brandenburg assumed the title of King in Prussia in 1701. It was first recognized by the Holy Roman Emperor, then by most of the other sovereigns of Europe at the conclusion of the Congress of Utrecht. The Pope withheld it until 1786, but the order of Teutonic Knights maintained their claims to the Duchy of Prussia until 1792.<sup>2</sup>

§ 61. After the creation of the Confederation of the Rhine by Napoleon I, the Electors of Bavaria, Saxony and Württemberg took the title of King, the Margrave of Baden and the Landgrave of Hesse-Darmstadt that of Grand-duke, and the Prince of Nassau that of Duke. These titles were not at first recognized by all the Powers, but they were tacitly acquiesced in by those which were parties to the Treaty of Paris of May 30, 1814, and by

<sup>1</sup> For a full account of this dispute see F. de Martens, *Recueil*, xiii. 130.

<sup>2</sup> Pradier-Fodéré, i. 51. See also Art. 18 of Treaty with Sweden of January 21, 1720 (Dumont, viii. pt. 2, p. 24).

the *acte final* of the Congress of Vienna to which all European sovereigns acceded.

§ 62. On the latter occasion the Emperor of Russia took the additional title of Tsar and King of Poland, the King of England—Elector of Hanover, that of King of Hanover, the King of Sardinia the additional title of Duke of Genoa, the Dutch branch of Nassau those of King of the Netherlands and Grand Duke of Luxemburg, the King of Prussia that of Grand Duke of Posnanian and of the Lower Rhine, the Dukes of Mecklenburg-Schwerin, Mecklenburg-Strelitz and Saxe-Weimar that of Grand-Duke, and the Landgrave of Hesse-Cassel that of Elector.

§ 63. In 1818, the Elector of Hesse-Cassel notified to the diplomatic assembly at Aix-la-Chapelle (§ 462) that he intended to take the title of King, having previously written to the sovereigns of the Five Powers letters in which he asked for their consent. At the sitting of October 11, the plenipotentiaries agreed that the title borne by a sovereign is not a simple matter of etiquette, but a fact involving important political questions, and that they could not collectively give a decision on the request put forward. However, the Protocol stated that the cabinets, taken separately, declared the Elector's request not justifiable on any satisfactory ground, and that there was no inducement to them to accede to it. That the cabinets at the same time took an engagement not to recognize for the future any change, either in the titles of sovereigns, nor in those of the princes of their families, without coming to a previous agreement. They maintained all that had hitherto been decided in this respect by formal documents (*actes*). The five cabinets explicitly applied this reserve to the title of Royal Highness, which they would henceforth only admit for the heads of grand-ducal houses, including the Elector of Hesse, and their heirs-apparent.<sup>1</sup>

<sup>1</sup> Pradier-Fodéré, i. 53 n. S.P.O. 9 $\frac{2}{3}$ 6.

§ 64. A vote of parliament at Turin on March 17, 1861 conferred on Victor Emmanuel, King of Sardinia, the title of King of Italy, recognized by Great Britain, March 30, by a letter from Lord J. Russell to the Marquis d'Azeglio. It was not at first admitted by Prussia and Austria, but has since received recognition.

§ 65. When the French President, Louis Napoleon, on December 2, 1852, assumed the title of Emperor of the French, the Minister for Foreign Affairs, Drouyn de Lhuys, informed the foreign diplomatic agents who had been accredited to him as President of the French Republic that they must obtain fresh credentials. The difficulties which were made on that occasion by the sovereigns of Russia, Prussia and Austria respecting the form of address to be used in the new credentials are recounted by Count Hübner in his *Neuf ans de Souvenirs d'un Ambassadeur*, v. i. 87.

§ 66. Prince Ferdinand of Bulgaria took the title of King on October 5, 1908, and was recognized as such by the Great Powers of Europe between April 20 and 29, 1909, n.s.

Prince Nicholas of Montenegro took the title of King August 15/28, 1910.

Prince Charles of Roumania was unanimously elected King by the national representatives, March 14, 1881.

Prince Milan of Serbia took the title of King March 6, 1881.

§ 67. Certain sovereigns use three sorts of title: the *grand titre*, the *titre moyen* and the *petit titre*.

The first of these includes the names of the fictitious as well as of the real dominions. For instance, the *grand titre* of the Emperor of Austria was "Empereur d'Autriche, roi apostolique de Hongrie, roi de Bohême, de Dalmatie, de Croatie, d'Esclavonie, de Galicie, de Lodomérie et d'Illyrie, roi de Jerusalem, etc., archiduc d'Autriche, grand-duc de Toscane et de Cracovie, duc de Lorraine, de Salzbourg, de Styrie, de Charinthie, de Carniole et de Bukovine, grand prince de Transylvanie,



margrave de Moravie, duc de la Haute-Silésie, de la Basse-Silésie, de Modène, de Parme, Plaisance et Guastalla, d'Auschwitz et Zator, de Teschen, Frioul, Raguse et Zara, comte princier de Habsbourg et Tyrol, de Kybourg, Goritz et Gradisca, prince de Trente et Brixen, margrave de la Haute et de la Basse-Lusace et en Istrie, Comte de Hohenembs, Feldkirch, Brigance, Sonnenberg, etc., seigneur de Trieste, de Cattaro et de la Marche Wende, grand voyvode de la voyvodie de Serbia, etc., etc."<sup>1</sup>

The King of Spain's *grand titre* includes the two Sicilies, Jerusalem, Corsica, Gibraltar, Austria, Burgundy, Brabant and Milan, Habsburg, Flanders, Tyrol, all of which are fictitious, one of them, Jerusalem, being also claimed in the *grand titre* of Austria. Those of the King of Prussia and the Emperor of Russia also were very long. The latter comprised "héritier de Norvège, duc de Slesvig-Holstein, de Stormarn, des Dithmarses et d'Oldenbourg" (but the last four also belong to the *grand titre* of the King of Denmark, together with sovereignty over the Wends and Goths) Down to 1783 inclusive the sovereigns of England asserted their right to the crown of France in similar fashion. To avoid disputes arising out of this practice, which was sometimes maintained with a show of seriousness in order to protract treaty negotiations, diplomatists discovered the expedient of inserting an article *de non præjudicando*, that "cela ne tire pas à conséquence.

The *titre moyen* is confined to real facts, and the *petit titre*, the most generally made use of in these days, is the highest of the whole number—namely, that by which the sovereign is habitually designated.

§ 68. Sovereigns, in addressing each other officially, begin: "*Monsieur mon frère*," adding the name of any blood relationship that may exist between them. To an empress or queen it is *Madame ma Soeur*.

<sup>1</sup> *Almanach de Gotha*, 1914.



Nicholas I of Russia, who regarded the elevation of Louis Philippe, in 1830, to the throne, with the title of King of the French, as a violation of the principle of legitimacy, constantly refused to give him the title of "brother," while reluctantly recognizing his government, and simply addressed him as "*Sire*." Previously to 1830 the Russian Emperor's letters to the legitimist King had always ended with "*votre bon Frère et Ami*."<sup>1</sup> This proceeding produced a coldness between the two courts, the result of which was that, although ambassadors had been mutually appointed, they were absent from their posts from 1843 up to the revolution of February 1848, and *chargés d'affaires* were maintained at Petersburg and Paris respectively. No exchange of decorations between the two courts took place till 1847, when a Russian Grand-duke visited Algeria and one of the southern military posts of France, where he showed himself particularly gracious to the French authorities.<sup>2</sup>

§ 69. Subsequently, when Louis Napoléon in December 1852 took the title of Emperor of the French, the same Russian Emperor, in the new credentials which had to be presented by his diplomatic representative, substituted the words "*Sire et bon ami*" for the traditional formula. Austria and Prussia joined him in this intentionally offensive proceeding. A few months earlier (May 1852) he had addressed to the Comte de Chambord (Henri V) a letter beginning: "Monsieur mon Frère et Cousin."<sup>3</sup>

§ 70. The essential point is the use of the word *Frère* or *Soeur*, and the address may be varied by the addition of other words. The correspondence of Queen Victoria affords numerous interesting examples. Thus Louis Philippe ends a letter to her "Qu'elle me permette d'y ajouter l'expression de la haute estime et de l'inviolable amitié avec lesquelles je ne cesserai d'être, Madame ma

<sup>1</sup> F. de Martens, xv. 101, 125.

<sup>2</sup> d'Haussonville, i. 279, 114.

<sup>3</sup> Hübner, i. 87; F. de Martens, xv. 266.

Soeur, de votre Majesté le bon Frère.” Another begins “Madame ma bien chère et bien bonne Soeur,” and ends : “Je suis, Madame ma très chère Soeur, de votre Majesté, le bien affectionné Frère.” A letter of the Queen to him, of October 1844, opens with “Sire, et mon très cher Frère,” and winds up with : “Je suis pour la vie, Sire et mon cher Frère, de votre Majesté la bien affectionnée Soeur et fidèle Amie.” This affectionate tone undergoes a diminution of tenderness after the “Spanish marriages” in 1846, and in reply to a letter from the Queen of the French announcing the duc de Montpensier’s marriage to the Infanta Luisa, the style is “*Madame*,” ending with “Madame, de votre Majesté, la toute dévouée Soeur et Amie.” After the revolution of 1848, in a letter of March 3, it is again “Sire et mon cher Frère,” and “Je me dis, Sire et mon bon Frère, de votre majesté, la bien affectionnée Soeur.”

Between the Emperor of the French and Queen Victoria the style used was “Madame et bonne Soeur, Madame et chère Soeur, Madame et très chère Soeur,” on one side and “Sire et mon cher Frère,” or “Sire et cher Frère” on the other, with the subscription “La bien bonne Soeur,” “La bien bonne et affectionnée Soeur,” “La très affectionnée Soeur et amie,” or “La bien affectionnée Soeur et fidèle amie.”

In October 1860, the King of Naples writes to Her Majesty : “Madame ma Soeur,” ending up with “une nouvelle preuve du respect que j’ai toujours pour elle, de l’affection sincère, et des sentiments de haute considération avec lesquels j’ai l’honneur d’être, Madame ma Soeur, de votre Majesté, le bon Frère.” The reply which was apparently drafted in English, is : “Sir my Brother— . . . the assurance of the invariable friendship and the high consideration with which I am Sir, my Brother, your Majesty’s good Sister.”

The Emperor of Russia in 1848 begins a letter to Her Majesty with “Madame ma Soeur,” and ends with “Madame, de votre Majesté, le tout dévoué et fidèle

bon Frère et ami," but in October 1853, when war was imminent between the two countries, it is plain "Madame—de votre Majesté, le tout dévoué frère et ami." The Queen's reply is far more cordial: "Sire et très cher Frère . . . Sire et cher Frère, de votre Majesté impériale la bien bonne Soeur et amie."

The letters exchanged with the King of Prussia in 1854 were in German, but are published in translation. March 17 the Queen writes what is rendered as, "Dear Sir and Brother . . . My much honoured Sir and Brother, your Majesty's faithful sister and friend." To which the reply, of May 24, as it seems to be, is "Most gracious Queen . . . I commend myself to the grace, goodwill and friendship of my august Royal Sister, I being your Majesty's most faithfully devoted, most attached servant and good brother." The reply of June, also in German, is simply, "Dearest Sir and Brother . . . your Majesty's Faithful Sister and Friend."

An exchange of letters in December 1848 and January 1849, between Pope IX and the Queen, was in this style—

"To the Most Serene and Potent Sovereign Victoria, the Illustrious Queen of England, Pius Papa Nonus . . . Given at Gaëta, the 4th day of December 1848, in the third year of our Pontificate." The reply is: "Most Eminent Sir, your Holiness . . . Given at Windsor Castle the [ ] day of January 1849."

A Foreign Office memorandum of January 5, 1849, says: "Other forms of writing Royal letters are: 1st, commencing with 'Sir my brother' (or 'Sir my cousin,' etc. as the case may be), and ending thus—

'Sir my Brother,  
your Majesty's  
Good Sister.'

"2nd, commencing with the Queen's titles. In these letters the plural 'we' and 'our' are employed instead

of 'I' and 'my,' and the letters terminate thus: 'your Good Friend.'

"This form is now used almost exclusively for Royal letters to republics."

Royal personages in their strictly private correspondence address each other in the same friendly and affectionate style as ordinary mortals.

§ 71. Titles of heirs apparent, when not styled Prince Imperial or Prince Royal.

*Spain.* Principe de Asturias; if there are only daughters the next heiress is called Princesa de Asturias. Other children are Infante and Infanta respectively.

*Portugal* (formerly) Dom [Christian name] d'Alcantara, or Principe de Baïra.

*England.* Prince of Wales (by patent).

*Netherlands.* Prince of Orange.

*Belgium.* Duc de Brabant.

*Sweden.* Duc de Scanie.

As long as the Holy Roman Empire continued to exist, the heir apparent was designated King of the Romans (by election). Napoleon I copied this when he conferred on his infant son the title of King of Rome.

The heir-apparent of the *German Emperor* was Kronprinz, so also the heir of the Emperor of *Austria*. The other children of the latter were archdukes and archduchesses.

*Russia.* Tsarévitch.<sup>1</sup>

§ 72. As no rule has hitherto been devised for regulating precedence among sovereigns or among the members of their respective families, the question of the relative place to be taken by them on the occasion of a gathering of more than two must naturally present difficulties. The meeting of the emperors Napoleon I and Alexander I at Erfurt, in September 1808, was attended by a number

<sup>1</sup> de Martens-Geffcken, ii. 21.

of kings, grand-dukes and princes belonging to the Confederation of the Rhine. Among them were the Kings of Saxony, Württemberg, Westphalia, Bavaria, the Dukes of Oldenburg, Saxe-Weimar, Saxe-Coburg-Gotha, Mecklenburg-Schwerin and Mecklenburg-Strelitz, and the Prince of Tour und Taxis. At a great dinner at Weimar, on October 6, the order among these kings seems to have been Westphalia, Bavaria, Württemberg, Saxony.<sup>1</sup>

At the Congress of Vienna in 1814-15 there was again an assemblage of crowned heads. Francis I of Austria was the host, and among the guests Alexander I of Russia naturally ranked first. Next to him was the King of Prussia. Among the lesser sovereigns Christian VI doubtless had the first place. Then in order came Maximilian-Joseph I of Bavaria, and Frederick I of Württemberg, the Elector of Hesse and the Grand-Duke of Baden. Besides these there were the heads of the elder branch of the House of Brunswick and of both the German branches of the House of Nassau, the Dukes of Saxe-Weimar and Saxe-Coburg-Saalfeld, regarding whose relative rank disputes were not likely to arise.<sup>2</sup>

At Aix-la-Chapelle, in 1818, the only sovereigns present were the emperors of Austria and Russia and the King of Prussia. According to some authorities all three attended at Troppau in October 1820, but the King of Prussia did not go to Laybach. At Verona, in 1822, besides these three the King of Sardinia was present.

During the meeting of the three Emperors at Berlin, in 1872, these Sovereigns took precedence over each other alternately in every succeeding ceremony, and the National Hymns of each country were also played accordingly.

On the occasion of the Vienna Exhibition of 1873, the Sovereigns representing the Great Powers, including the King of Italy and the Sultan, enjoyed precedence

<sup>1</sup> Vandal, *Napoléon et Alexandre*, I<sup>er</sup>, i. 414, 444.

<sup>2</sup> *Camb. Mod. Hist.*, ix. 580 *et infra*.

over one another in alphabetical order according to the French language. A similar rule was observed as regarded the Hereditary Princes of the Powers.

§ 73. It is not usual for crowned heads to attend at each other's coronations, marriages and on other similar occasions, but they are often represented by members of their families. The order in which these are placed must be determined by the court officials, or in the last resort by the sovereign who is host. At the inauguration of King Leopold of Belgium in December 1865, when one crowned head, the King of Portugal, was present, he naturally had the place of honour. Next to him came the Comte de Flandres (Belgium), the Prince of Wales (Great Britain), Prince Arthur of England, the Crown Prince of Prussia, the Duke of Cambridge, the Archduke Joseph of Austria, Prince George of Saxony, Prince William of Baden, Prince Nicholas of Nassau, Prince Louis of Hesse, Prince Augustus of Saxe-Coburg-Gotha, and Prince Leopold of Hohenzollern-Sigmaringen. It is not easy for the uninitiated to divine what principle dictated this arrangement.<sup>1</sup>

§ 74. At Queen Victoria's Jubilee, in 1897, a great deal of difficulty was experienced in settling the precedence among the crowned heads and heirs-apparent, but some assistance was derived from what had been decided at the assemblage of august personages that had taken place at Vienna in the year 1873. Possibly the order was: Great Powers arranged according to French alphabetical order, then the Kings of minor Powers, and lastly Grand Dukes and other reigning Princes. Perhaps the family courts (*i.e.* those related to Queen Victoria) were given the *pas* over equals. There was a difficult question as to the relative rank of the heir-apparent of a Great Power and a reigning Grand Duke, which the Queen is reported to have settled by giving to each precedence on alternate evenings. The safest plan is to consult the persons concerned before-

<sup>1</sup> García de la Vega, 561.



hand, but the final decision must rest with the sovereign who is host or hostess.

If it is a question of toasts at a banquet the best order would be : Great Powers, the minor Powers, each in alphabetical order. At the Foreign Office dinner on the Sovereign's birthday to the diplomatic representatives of foreign Powers the senior ambassador proposed the health of the Sovereign, and " God save the King " was played. Then the Secretary of State toasted the friendly Powers, and the national anthem of the *doyen* was given.

§ 75. The frequent intermarriages that have taken place between members of Christian reigning families in Europe have created a bond of relationship among the crowned heads, and have rendered it natural and usual to communicate to each other news of interesting events, such as accession to the throne, congratulations on happy occurrences, such as marriages and births, condolences on deaths, court mourning of longer or shorter duration, especially on the death of a sovereign. These notices are generally given by means of a letter from the sovereign, transmitted through his diplomatic representatives at the friendly courts, and mostly with instructions to present it in the usual manner. In the majority of cases this is done by forwarding it in a Note to the Minister for Foreign Affairs. Sometimes a special embassy is sent, particularly for congratulations on accession to the throne, or to a coronation. If the distance is very great the local diplomatic agent may be appointed as special ambassador for the occasion. Intimations of deaths are given in the same way, and the duration of court mourning which will be observed is simply mentioned, without any request to adopt mourning on the occasion, as such a mark of sympathy must be afforded altogether spontaneously.

The Emperor of Japan, though not related by marriage to any European reigning family, is nevertheless admitted to the circle of those to whom such notices

are sent. The King of Siam has received similar indications of friendship. On the attainment by the late Empress-Dowager of China of her seventieth year by Chinese reckoning, various foreign Crowned Heads offered her their felicitations, to which she responded by sending to each of them a large photograph of herself, suitably framed and enclosed in a box covered with silk of the imperial yellow colour.

§ 76. Coronations of Sovereigns are often attended by special ambassadors sent by the other Crowned Heads, and weddings or funerals by members of the related royal and imperial families. The case of the inauguration of King Leopold II of Belgium, in 1865, has already been mentioned in § 73.

By way of emphasizing the friendly feeling of Great Britain to the United States, condolences have been addressed to the family of a President dying during his term of office by the Sovereign of Great Britain and Ireland.

§ 77. Friendly sovereigns usually exchange their highest orders of chivalry, which are sometimes conferred also on members of reigning families. On the outbreak of war, in August 1914, the Emperor of Austria, the German Emperor, the King of Württemberg, the Duke of Saxe-Coburg, the Duke of Cumberland, the Grand-Duke of Hesse, Prince Henry of Prussia, the Crown Prince of Germany and the Grand-Duke of Mecklenburg-Strelitz having become enemies, ceased to be members of the Most Noble Order of the Garter, and their banners were removed from St. George's Chapel at Windsor. When one sovereign confers a decoration on another, the intention to confer is expressed by letter. On rare occasions the Garter has been conferred on a foreign sovereign on the occasion of his visiting England. Usually it is conveyed to him by a complimentary special mission.<sup>1</sup>

George III declined to accept the Golden Fleece

<sup>1</sup> For an account of what takes place in connection with the investiture, see Redesdale.

offered to him by the Junta at Seville in 1808. This is probably an isolated instance of such a refusal. It was based on the fact that no English sovereign since Edward VI had received a foreign decoration.<sup>1</sup>

§ 78. Nothing definite has been laid down with regard to the position of an ex-President of a republic when travelling in a foreign country. Strictly speaking, he becomes a private person when his term of office expires. It is probable, however, that in most countries the privileges of the head of a state would be accorded to him if official notice of his journey were given to the governments concerned, and that he would at least receive as courteous treatment as a sovereign travelling incognito.

<sup>1</sup> Villa-Urrutia. *Relaciones entre España é Inglaterra durante la Guerra de la Independencia*, i. 317.

## CHAPTER VI

### MARITIME HONOURS

§ 79. Protocol of November 21, 1818, signed at Aix-la-Chapelle—§ 80. Man-of-war with royal personage arriving at foreign port—§ 81. Salutes to diplomatic officials, English rules—§ 82. National fêtes, salutes may be fired—§ 83. Visits of men-of-war to foreign ports—§ 84. Salutes by H.M. ships to foreign Sovereigns and Presidents—§ 85. Salutes to members of foreign royal families—§ 86. Salutes to members of the Royal Family—§ 87. Salutes on occasion of foreign national fêtes—§ 88. Salutes to foreign officials.

§ 79. At the so-called Congress of Aix-la-Chapelle, in 1818, a protocol was signed on November 21 which contained the following paragraph—

“ Des doutes s'étant élevés sur les principes à observer relativement au salut de mer, il est convenu que chacune des Cours signataires de ce protocole fera remettre à la Conférence ministérielle à Londres les règlements qu'elle fait observer jusqu'ici à cet égard, et que l'on invitera ensuite les autres Puissances à communiquer les mêmes notions de leur côté, afin que l'on puisse s'occuper de quelque règlement général sur cet objet.”

This protocol bears the signatures of Metternich, Wellington, Nesselrode, Richelieu, Hardenberg, Capo d'Istria, Castlereagh and Bernstorff. Nothing seems to have been done to carry this agreement into effect.

§ 80. A foreign man-of-war arriving at a port provided with a saluting battery,<sup>1</sup> and having on board a foreign sovereign, a prince or princess of the blood, or an ambassador, is first saluted by the forts. The arrangements are usually made beforehand by an officer, sent

<sup>1</sup> de Martens-Geffcken, i. 207-8.

ashore by the commander of the man-of-war, with the officer in command of the fort or other high official representing the government of the country. The salute to the sovereign is not returned by the ship, but if the personage on board is a prince or a princess of the blood, or an ambassador, it is immediately returned. A second salute is then exchanged between the ship and the fort in honour of the flag, the number being regulated by the rank of the officer commanding the ship. When the personage disembarks, he is saluted by the ship with the number of guns prescribed by the regulations of his own country. This salute to an ambassador or other diplomatic agent is fired only when he disembarks finally on the territory of the state to which he is accredited.

§ 81. The English rules governing the number of guns forming a salute to each class of diplomatic officer, the places and occasions, are laid down in the Foreign Office List. For an Ambassador the number of guns is 19, for an Envoy Extraordinary and Minister Plenipotentiary 17, for a Minister Resident, or other authority below the rank of Envoy and above that of *Chargé d'affaires* 15, for a *Chargé d'affaires* or a subordinate diplomatic agent left in charge of a mission, or for an Agent and Consul-general, 13 guns. It is to be observed that not all of H.M. ships are "saluting ships"; the point is governed by the number of guns that can be fired for saluting purposes. The number of guns accorded to British diplomatists by the English rules appears to exceed the number fired in accordance with the French regulations.<sup>1</sup>

When a diplomatic agent pays an official visit in a foreign port to the officer commanding the naval forces of his [the agent's] country, he is received on board with much ceremony, but a salute is fired only on the first occasion, at the moment of his leaving the ship to return on shore. He acknowledges the compliment by standing

<sup>1</sup> de Martens-Geffcken, i. 209.

up in his boat and removing his hat until the last gun is fired. If he desires it, the commanding officer of the ship he visits will send a boat to bring him and his suite, if any, on board, and back again ashore. In going on board the person of highest rank ascends the ship's side first. When he leaves her to take his place in the boat, he is the last to leave the ship's deck and enter the boat.

§ 82. When men-of-war happen to be lying in a foreign port on the occasion of a national fête, it is customary to dress ship and fire a salute, on intimation being given beforehand by the proper authority that it is a national anniversary. But this intimation must not take the form of an invitation to follow the example of the fort or ship belonging to the country of which it is the official anniversary ; that is supposed to be done as a matter of course on the intimation being given.

For instance, if one of H.M. ships is lying in a port where there is a saluting fort, on H.M. birthday, and men-of-war of other countries are also present, the commanding officer of H.M. ship sends an officer in full uniform to give an intimation to the commanding officers of the fort and foreign ships, that, on the day in question, it is his intention to dress ship and fire a royal salute. Nothing more. A royal salute is of twenty-one guns.

These are, however, matters with which the diplomatic agent, is not, as a rule, concerned, except in countries where the capital happens to be situated at a port where ships can lie, and the conduct of the ceremonies to be observed in such cases concerns the naval officers ; the diplomatic official does not intervene, but he will do well, if resident at such a place, to inform himself of the rules that are observed in this respect by the navy of his own country.

§ 83. In many countries there exists a regulation prohibiting more than three war-ships of any foreign country from lying at the same time in a port of the country. When an official friendly visit is to be paid



by a larger number, the diplomatic agent will probably be the channel through whom the arrangements have to be made, and he may also be afforded an opportunity of presenting some of the principal officers of the squadron to the sovereign at a private audience granted for the purpose.

§ 84. The regulations with regard to salutes by H.M. ships to foreign sovereigns and to foreigners not of royal families are laid down in the “ King’s Regulations and Admiralty Instructions ”—

44. Whenever any Foreign Crowned Heads or Sovereign Princes, or the Consorts of any Foreign Crowned Heads or Sovereign Princes, or the President of a Republic, shall arrive at or quit any place in H.M. dominions where there is a Fort or Battery from which salutes are usually fired, they shall receive a Royal Salute on their first arrival and again on their final departure from such Fort or Battery and from any Ships present, and a similar Salute is to be fired upon their going on board or leaving any of H.M. Ships ; on such occasions, during the Salute, the Senior Officer’s Ship shall display at the main the Flag of the nation of such Royal or distinguished personage.

§ 85. 45. Whenever any Prince, being a member of a Foreign Royal Family, shall arrive at any British Port, or visit any of H.M. Ships, the same Salutes shall be fired and compliments paid to him as are directed to be paid to the members of the Royal Family of England ; the Flag of the nation of such Foreign Prince being displayed at the main.

2. Whenever such visits to H.M. Ships shall take place in a foreign Port, corresponding Salutes shall be fired, and the Flag of the nation of the Royal Visitors hoisted, as already explained.

§ 86. 42. Whenever any members of the Royal Family shall arrive at or quit, any place where there is a Fort or Battery from which Salutes are usually fired, they shall receive a Royal Salute, on their first arrival and final departure, from such Fort or Battery, and from all H.M. Ships and Vessels present.

2. Whenever any member of the Royal Family shall go on board any of H.M. Ships, the Standard of His or Her Royal Highness shall be hoisted at the main on board such Ship, and

a Royal Salute shall be fired from her on such member of the Royal Family going on board, and again upon leaving her.

3. Whenever any member of the Royal Family shall be embarked in any Ship or Vessel, and the Standard of His or Her Royal Highness shall be hoisted in her, every one of H.M. Ships meeting, passing, or being passed by her shall fire a Royal Salute.

§ 87. 52. On the occasion of the celebration of the Birthday of the King or Queen of a foreign nation, or on other important National festivals and ceremonies, by any Ships of War or Batteries of such nation, H.M. Ships present may, on official intimation being received by the Senior Officer, fire such Salutes in compliment thereto, not exceeding 21 guns, as are fired by the Ships or Batteries of the foreign nation, the Flag of such nation being displayed on these occasions at the main of the Senior Officer's Ship.

70. Salutes, in conformity with the Table of Salutes, shall be fired in compliment to Foreign Officials from either Forts or Ships, in the same manner, and in circumstances similar to those in which Salutes to a British official would be fired.

[The table is contained in Article 69.

	No. of Guns.	
Governor . . .	17	When visiting a ship either on going on board or on leaving by such ship.
Ambassador . . .	19	At all places. Whenever he embarks, and if he goes to sea, on finally landing, by such ship. No limitation of occasion.
Envoy Extraordinary	17	Within the precincts of the nation to which he is accredited, when visiting a ship or on quitting her, only once within twelve months, and by one ship only on the same day.
Minister Resident .	15	Within the precincts of the nation to which he is accredited, when visiting a ship or on quitting her, only once within twelve months, and by one ship only on the same day.

## No. of Guns.

Chargé d'Affaires, or a subordinate diplomatic Agent left in charge of a mission ; Agents and Consuls-General ; Commissioners and Consuls-General . . . .	Within the precincts of the nation to which he is accredited, when visiting a ship or on quitting her, only once within twelve months, and by one ship only on the same day.]
13	

*Foreigners of Distinction.*

§ 88. 77. If a Foreigner of high distinction, or a Foreign Flag or General Officer, visit any one of H.M. Ships, he may be Saluted on his going on board, or on leaving the Ship, with the number of guns he from his rank would receive on visiting a Ship of War of his own nation, or with such number not exceeding 19 guns as may be deemed proper ; should the number of guns to which he is entitled from Ships of his own nation be less than is given to the Officers of his rank under Article 70, he is to be Saluted with the greater number.

95 (b). When Salutes are fired, whether in British or in Foreign ports, on the occasion of a Foreign National Festival, the Flag of the Nation celebrating the day is to be hoisted at the Main during the Salute and for such further time as the Ships of such Nation may be dressed—if none are present, until sunset.

(e). On the occasion of visits from Foreign Diplomats, Governors, or Naval, Military, or Consular Authorities, or of distinguished Persons entitled to Salutes, the Flag of the Foreign Nation to which the person belongs is to be hoisted at the Fore during the personal Salute.

## CHAPTER VII

### THE LANGUAGE OF DIPLOMATIC INTERCOURSE, AND FORMS OF DOCUMENTS

§ 89. Former use of Latin, French and Spanish—§ 90. Language used in treaties—§ 91. Use of the French language not to prejudice right of the parties to use any other—§ 92. French attempt to impose their language on English commissioners in 1753—§ 93. Treaties with Turkey—§ 94. Present practice as to treaties—§ 95. British regulations as to correspondence—§ 96. Bismarck's anecdote—§ 97. Forms of diplomatic written communications—§ 98. Despatch to agent for communication—§ 99. Canning's refusal to hear despatch read, unless copy left with him—§ 100. Example of Note in the third person (refusal to ratify)—§ 101. Recognition of annexation—§ 102. *Note Verbale*—§ 103. *Mémoire*, memorial, memorandum or *pro-memoria*—§ 104. *Note Collective*, example of, and reply—§ 105. Proposed Note to Spain in 1822—§ 106. *Note identique*—§ 107. Formal parts of a Note—§ 108. Fox and Talleyrand correspondence in 1806, forms used—§ 109. French usage since 1900—§ 110. Belgian usage—§ 111. Spanish usage—§ 112. English usage—§ 113. German usage—§ 114. *Lettres de Chancellerie* and *Lettres de Cabinet*—§ 115. Spanish *Carta de Cancilleria*—§ 116. *Lettres de Cabinet*—§ 117. United States usage—§ 118. Spanish reply to letter of a Spanish-American President.

§ 89. FORMERLY the language in universal use was Latin, which may be said to have been at first the only language in which men knew how to write, at least in central and western Europe. When French, Spanish, Italian and English took on a literary form, the instructions to diplomatic representatives came to be framed in the language of the envoy's own country. German was the latest of all to be written. Latin was also used in conversation between diplomatists, where the parties were unable to speak each other's language. French came next in frequency of use after Latin. At the end of the fifteenth century it had become the court language

of Savoy and the Low Countries, and also of the Emperor's court. When the League of Cambrai was formed, in 1508, the full powers of both Imperial and French negotiators were drawn up in French, but the ratifications were in Latin. Henry VI of England wrote to Charles VII of France in French, and that language was usually employed both in writing and speaking between the two countries, but in consequence of English insistence Latin was again resorted to in the sixteenth century. Spanish was the only language that could compete with French. Ferdinand and Isabella tried the experiment of making out full-powers in their own tongue, but the success that attended the innovation was insignificant. At the end of the sixteenth century the King of France no longer writes Latin except to the King of Poland, to such an extent had the use of French gained ground.<sup>1</sup>

§ 90. *Language of Treaties.* At the beginning of the sixteenth century all agreements drawn up in English, German or Italian have a domestic or quasi-domestic character. English served for Anglo-Scotch relations, German for those of German princes and of Germany with Bohemia, Hungary and Switzerland. Italian was sometimes employed between the smaller Italian states. In the Low Countries, Lorraine, and at Metz, French was naturally the native language. Only two languages, however, were admitted for drawing up international compacts: Latin for the apostolic notaries and the whole school attached to the Roman Chancery, and French. England and Germany constantly used the latter, above all for treaties with France and the Low Countries. However, at the end of the fifteenth century England reverted to Latin for its treaties with France.<sup>2</sup>

The treaties of Westphalia (1648) were in Latin. The Treaty of January 30, 1648, between Spain and the United Provinces, by which the independence of the latter was recognized, was in French and Dutch, but

<sup>1</sup> De Maulde-la-Clavière, i. 86, 389.

<sup>2</sup> *Ibid.*, 209.

Latin was used for all communications between France and the Empire up to the time of the French Revolution. (Garden, *Hist. des Traités de Paix*, v. 155n.) The Anglo-Danish Treaty of July 11, 1670, is also in Latin. The Anglo-Dutch Treaty of 1674 in Latin, but the Treaty of Alliance of 1677-8 in French. The Treaty of the Grand Alliance of September 7, 1701, was in Latin, and likewise that of May 16, 1703, between Great Britain, the Emperor and the States-General, members of the Grand Alliance, and Portugal. In 1711 Queen Anne wrote to her allies in Latin, and the full-powers given to her plenipotentiaries for the Congress of Utrecht were in the same language. But at the first conference, in 1712, the English demands were presented in French, as were also those of Prussia, Savoy and the States-General. The commercial treaty between England and France of April 11, 1713, was in Latin, certain forms appended were in Latin and French, and the Queen's ratification was in Latin. But the certificate of the exchange of ratifications was drawn up in French. The treaties signed on the same day by France with Portugal, Prussia, the Duke of Savoy and the States-General were in French. Sweden and Holland exchanged correspondence about the same period in Latin, but Peter the Great used French. On July 13, 1713, Spain and Savoy signed a treaty of peace in Spanish and French, while the treaty of peace of September 7, 1714, signed by the Emperor and the Empire with France, was in Latin.

Russia used German in her early treaties with Brandenburg, with Austria, German, Latin and French on different occasions, but from about the middle of the eighteenth century always French; with England always French from 1715 onwards.<sup>1</sup>

§ 91. At Aix-la-Chapelle, in 1748, a separate article was annexed to the treaty of peace signed by the plenipotentiaries of Great Britain, Holland and France,

<sup>1</sup> F. de Martens, v. and ix. (x.).



to the effect that the use of the French language in the treaty of peace was not to be taken as prejudicing the right of the contracting parties to have copies signed in other languages, in the following words—

“ Il a été convenu et arrêté, que la langue Française, employée dans tous les exemplaires du présent traité, ne formera point un exemple qui puisse être allégué, ni tirer à conséquence, ni porter préjudice, en aucune manière, à l’une ni à l’autre des puissances contractantes ; et que l’on se conformera à l’avenir à ce qui a été observé, et doit être observé, à l’égard et de la part des puissances, qui sont en usage et possession de donner et de recevoir des exemplaires de semblables traités, en une autre langue que la Française, le présent traité [et les accessions qui interviendront], ne laissant pas d’avoir la même force et vertu, que si le susdit usage y avoit été observé.”

The same separate article, with the omission of the words in square brackets, was attached to the Treaty of Paris of 1763, between Great Britain, France and Spain, and also to the Treaty of Versailles of 1783, between Great Britain and France.<sup>1</sup> Article 120 of the Final Act of the Congress of Vienna declared that—

“ La langue française ayant été exclusivement employée dans toutes les copies du présent traité, il est reconnu par les Puissances qui ont concouru à cet acte que l’emploi de cette langue ne tirera point à conséquence pour l’avenir ; de sorte que chaque Puissance se réserve d’adopter, dans les négociations et conventions futures, la langue dont elle s’est servie jusqu’ici dans ses relations diplomatiques, sans que le traité actuel puisse être cité comme exemple contraire aux usages établis.”<sup>2</sup>

The treaty of alliance of December 11, 1742, between Great Britain and Russia was signed in two copies, the English negotiator signed one, and exchanged it for the other signed by the two Russian negotiators (F. de Martens, *Recueil* ix (x), p. 128).

The use of French as the common language of diplomacy has now become so generally recognized that in

<sup>1</sup> Jenkinson, iii. 342.

<sup>2</sup> d’Angeberg, 1432.

1856 it was not thought necessary to insert any such stipulation in the treaty of peace of that year.

§ 92. The French had tried to enforce a demand that correspondence addressed to their Minister for Foreign Affairs should be written in their own language.

On July 8, 1748, a declaration was signed by the plenipotentiaries of Great Britain, France and the States-General at Aix-la-Chapelle, by which, among other matters, it was agreed that within two months' time commissioners duly authorized should meet at St. Malo, or any other place that might be agreed upon between the high contracting parties, to give orders for the reciprocal restitution of or indemnities for prizes made after the lapse of six weeks from the date of the signature of the preliminaries of peace, April 30, 1748.

The French and English commissioners were occupied for some time with the question of the limits of Nova Scotia, and the occupation by the French of the neutral island of Santa Lucia in the West Indies. It was only in the spring of 1751 that the two governments agreed to instruct their commissioners to devote a portion of the time at their disposal to the examination of the prize claims.

In March 1753, the French commissioners proposed to return to the English a memorandum presented by them, on the ground of its being drawn up in the English language, and claimed a prescriptive right to have all transactions carried on in French.

The British Government, on this question being referred to them, sent instructions to Paris, stating that out of complaisance they had at first usually accompanied the English *memoranda* (or memorials) with a French translation, but the French commissioners having found fault with its wording, the commissioners had been ordered to confine themselves in future to the English language; but the French commissioners having now demanded the use of the French as a right, to comply would be to establish a precedent.

"All nations whatsoever have a right to treat with each other in a neutral language. As such, the French is made use of in transactions with the princes of the Empire and other foreign Powers, and if the Court of Versailles thinks fit to treat with His Majesty in Latin, the King will readily agree to it. . . . It is the King's express command that you should not for the future accept any paper from the French commissaries in their own language, unless they shall engage to receive the answer . . . returned to it in English."

The French commissaries then proposed to enter into an agreement, that giving or accepting any written papers in the French language should not be of any consequence, or drawn into a precedent. On the English commissioners reporting this to the Secretary of State, he informed them, in reply, that they should adhere strictly to their previous instructions and refuse to enter into any such agreement as was proposed<sup>1</sup>.

A French account of this incident is shortly as follows : The commission was appointed in November 1749, and began its work in 1750. The last memorial delivered on the French side was dated July 18, 1753. It had to fix the frontier in America, decide the ownership of St. Vincent, Tobago and St. Lucia, and solve the question of prizes made by the English marine before the declaration of war. The greater part of 1753 was wasted in the dispute over the language. Finally, the English Government refused to admit French as the only language to be used, and offered as a compromise the employment of a neutral language. The French Foreign Department was with difficulty persuaded by Mirepoix to give way, and the conferences were resumed.<sup>2</sup>

§ 93. The practice in regard to treaties with Turkey was somewhat peculiar. In 1739 two copies of the preliminaries of the Peace of Belgrade were drawn up,

<sup>1</sup> Comrs. to Holdernessee, March 21, 1753; Holdernessee to Comrs., April 5; Comrs. to Holdernessee, April 18; Holdernessee to Comrs., April 26; Comrs. to Holdernessee, May 2. S. P. O. For. France, vol. 239.

<sup>2</sup> Waddington, *Louis XV et le Renversement des Alliances*, 52.

in French and Turkish, the former being signed by the Imperial plenipotentiary, Count Neipperg, and the latter by the Grand Vizier. These were then delivered to the French Ambassador, Marquis de Villeneuve, who attached to each an *acte de médiation* and wrote the French guarantee on a separate sheet. He then delivered to the respective plenipotentiaries the copy made out in the language of the other party, together with a copy of the act of guarantee. The definite treaty was drawn up in Latin and Turkish.<sup>1</sup> It seems probable that each party received the copy made out in the language used by the other and signed by him alone.

The Russian treaty on the same occasion was made out in Italian and Turkish, the former being signed by Villeneuve on behalf of Russia, the latter by the Grand Vizier. Villeneuve handed the Italian text to the Grand Vizier, who in turn delivered to him the Turkish document.<sup>2</sup>

The Treaty of Kutchuk-Kainardji, between Russia and Turkey, in 1774 (January 10, 1775), was drawn up in Russian, Turkish and Italian.

In 1791, when the Peace of Sistovo was concluded between the Emperor and Turkey, one text of the treaty was worded in French, the other in Turkish, and Article 14 provided that the former should be signed by the imperial plenipotentiaries, the Turkish by those of the Porte, and that the two documents should be exchanged through the mediating ministers, English, Prussian and Dutch.<sup>3</sup>

§ 94. When treaties or conventions are concluded between more than two Powers, the present practice is to use French ; but if between two Powers only, then it is very usual to have two texts, one in each language,

<sup>1</sup> Koch and Schoell, xiv. 365, 370.

<sup>2</sup> *Ibid.*, 383 n. For an account of the whole negotiation and of the diplomatic skill employed by the Marquis de Villeneuve, see A. Vandal, *Une Ambassade Française en Orient sous Louis XV*, and *post*, § 634, in Chapter XXXIII.

<sup>3</sup> *Ibid.*, 493.

signed by the plenipotentiaries of both parties. It would be desirable in such cases to add an article specifying which of the two is to be regarded as authoritative in case of a difference of opinion as to the precise meaning of a stipulation, because of the very great difficulty of producing two versions which shall exactly coincide word for word and clause for clause.

Dr. Alt has the following remarkable statement with regard to the language employed in the different counter-parts of the London Treaty of May 11, 1867, by which, among other things, the perpetual neutrality of Luxemburg was placed under the guarantee of the signatory Powers (with the exception of Belgium, which is herself a perpetually neutral state).

“Der *Londoner Vertrag* d. J. 1867, abgeschlossen unter England, Frankreich, Russland, Oesterreich, Preussen, Italien, Belgien und Holland (wegen Luxemburg) ist in allen acht Urkunden in *französischer* Sprache abgefasst, *Titel, Einleitung und Ratifications-Clausel* dagegen sind in den *Sprachen der Aussteller* ausgedrückt, mit Ausnahme *Oesterreichs*, welches die *lateinische Sprache* angewandt hat.”<sup>1</sup>

The French and Belgian counterparts would, of course, be in the French language throughout. So is also the Russian text reproduced by F. de Martens, *Recueil des Traités et Conventions*, etc., xii. 370. The whole of the English copy, preserved at the Public Record Office, is in French, including the portions which, according to Dr. Alt, would be in English. We can only draw the conclusion that he had been misinformed. Possibly the idea arose from the fact that the instruments of ratification were for Austria in Latin, for Belgium, France, the Netherlands, Luxemburg and Prussia in French, for Italy in Italian, and for Russia in Russian with a French translation. The British instrument of ratification was no doubt drawn up in English.

<sup>1</sup> *Handbuch des Europäischen Gesandtschafts-Rechtes*. Berlin, 1870, 188 n. No authority is cited for this statement, which on the face of it is improbable.



§ 95. The assertion in 1753 of the right to use the English language in diplomatic communications has already been mentioned. In 1800 Lord Grenville introduced the practice of conducting his relations with foreign diplomatists accredited to the Court of St. James' in English instead of French, the language previously employed. Lord Castlereagh, when at the headquarters of the allied Powers in 1814-15, wrote in English to the foreign sovereigns and ministers. Canning, in 1823, discovered that the British representative at Lisbon was in the habit of writing in French to the Minister for Foreign Affairs, although the latter addressed him in Portuguese; he therefore instructed him to use the English language in future. In 1826 a controversy arose with the Prussian Government in consequence of Count Bernstorff's persistent refusal to receive an English note from the British representative,<sup>1</sup> on the ground that it was the official rule to receive such communications only when written in French or German. On this occasion an instruction was sent to adhere to the use of English, but to intimate that a reply would be accepted written in either German, French or Latin. But this did not settle the question, as the Prussian Foreign Office continued to claim the right of prescribing to foreign diplomatic agents the language in which they should address it, but offered to agree that each Government should confine itself in future to the use of its own language, however inconvenient that might prove. To compromise the matter Canning proposed that the British minister should in future send a French or German translation with the English text, the German Government to be at liberty to write in French, or in German accompanied by an English version. As Canning left the Foreign Office shortly afterwards, the question remained in abeyance until 1831, when it was found that the British minister of that period at Berlin had written several Notes in French to the Prussian Secretary of State, and he was instructed to

<sup>1</sup> Stapleton, *Political Life of the Right Hon. George Canning*, iii. 265.



use English in future. He adopted, however, the expedient of enclosing with his English Notes a certified French translation.

From 1814 to 1833 the practice of the British representatives at Paris, the Hague, Madrid and Lisbon was to use the English language, but at other Courts they continued to write in French. In 1834 the minister at Vienna was instructed to write in English only, in consequence of a question having been raised at that capital respecting the language to be employed, and in 1837 a similar instruction was forwarded to the minister at Turin, owing to the discovery that he had followed the practice of writing in French.

The question was again raised in 1844 by the Prussian Secretary of State of that time, who objected to communications being addressed to him in English only, and Lord Aberdeen instructed the British minister at Berlin that the difficulty would be obviated by adding a French or German translation. In 1851 the President of the German Diet set up the pretension to receive translations of Notes addressed to that Body, on which occasion Lord Palmerston instructed the British representative that in the opinion of Her Majesty's Government every Government was entitled to use its own language in official communications, on the ground that it is more certain of expressing its meaning in its own language. He regarded as objectionable the practice of furnishing a translation, because it led to the translation being treated as an original in place of the English version.

Since that time the right of British diplomatic agents to use their own language for communications to the Government to which they are accredited, does not seem to have been further contested, the right claimed by Great Britain being recognized by her as appertaining to every other state. It is obvious that while a man speaking or writing in his own language is able to say whatever he wishes, on the other hand, when employing

a foreign tongue, he can only say what he is enabled to express by the knowledge which he happens to possess of that particular language.

§ 96. The general usage now is that diplomatists address the Foreign Minister in their own language or in French, and that he uses his own in reply. Sometimes the use of one's own language may cause inconvenience, as is shown by an anecdote related to Dr. Busch by Count Bismarck—

“Ach Keudell,” sagte er dann plötzlich, “da fällt mir ein : ich muss morgen eine Vollmacht haben, vom Könige, natürlich Deutsch. Der Deutsche Kaiser darf nur Deutsch schreiben. Der Minister kann sich nach den Umständen richten.” “Der amtliche Verkehr muss in der Landessprache geführt werden, nicht in einer fremden. Bernstorff hat das zuerst durchsetzen wollen bei uns, er war aber damit zu weit gegangen. Er hatte an alle Diplomaten deutsch geschrieben, und alle antworteten ihm—nach einer Complotte natürlich—in ihrer Muttersprache, russisch, spanisch, schwedisch und was weiss ich alles, so dass er einen ganzen Schwarm von Uebersetzern im Ministerium sitzen hatte—So fand ich die Sache, als ich ins Amt trat. Budberg schickte mir eine russische Note. Das ging doch nicht an. Wollten sie sich revanchiren, so müsste Gortschakoff an unsern Gesandten in Petersburg russisch schreiben. Das war das richtige. Man kann vielleicht verlangen, dass die Vertreter des Auslandes die Sprache des Landes verstehen und gebrauchen, in dem sie accreditirt sind. Aber mir in Berlin auf ein deutsches Schreiben russisch antworten, das war unbillig. Ich bestimmte also : was nicht deutsch oder französisch, englisch oder italienisch eingeht, bleibt liegen und geht zu den Acten.—Budberg schrieb nun Excitatorien über Excitatorien, immer russisch. Keine Antwort, die Sachen waren in den Actenschrank gewandert. Endlich kam er selbst und fragte, warum ich ihm denn nicht antwortete. ‘Antworten?’ sagte ich ihm verwundert, auf was? Ich habe nichts gesehen von Ihnen!—Nun, er hätte vor vier Wochen geschrieben und mehrere Male erinnert.—Richtig, da besinne ich mich, sagte ich ihm, unten liegt ein Stoss Actenstücke in russischer Schrift, da mags wohl dabei sein. Unten aber versteht kein Mensch russisch, und was in einer unverständlichen Sprache ankommt geht zu den Acten.”—Sie waren darauf, wenn ich recht verstand,

übereingekommen, dass Budberg französisch schreiben solle, und das Auswärtige Amt gelegentlich auch.<sup>1</sup>

§ 97. Written official communications between a diplomatic agent and the Minister for Foreign Affairs take one or other of three principal forms: (1) Note, (2) *note verbale*, (3) memorandum (*mémoire, promemoria*).

A Note may be in the first<sup>2</sup> or third person. Both are signed. The former is the more friendly style, the latter is stiff in tone, and should be reserved for serious occasions.

"There is one difference in the correspondence of all the foreign ministers here from that which is usual in Europe—they write letters instead of notes, in the first person instead of the third. The effect of this difference upon style is greater than any one not habituated to both modes would imagine. The third person, "The Undersigned," is stiff, cold, formal, and dignified; it is negotiation in court dress, bag wig, sword by side, chapeau de bras, white silk stockings, and patent shoe-buckles. Letters in the first person are negotiations in frock coat, pantaloons, half-boots, and a round hat."<sup>3</sup> To this may be added that it is like the difference between a formal invitation to dinner, "Mr. and Mrs. X request the pleasure of Mr. Y's company," and "Dear Y, will you come and dine with us?"

When a Government finds it necessary to address a formal communication to another, it usually makes use of its own diplomatic representative to the other State as the channel. The reply should not be addressed to the diplomatic agent who presented it, but should be

<sup>1</sup> *Graf Bismarck*, 4th edition, Leipzig, 1878, ii. 289.

<sup>2</sup> De Martens-Geffcken, iii. 100, terms these *lettres diplomatiques*. The French *Protocole du Ministère des Affaires Étrangères*, 1900, calls them *letters*, and does not mention Notes in the third person, except under the heading of *Notes Verbales*. But the latter are not signed.

<sup>3</sup> J. Q. Adams' *Memoirs*, iv. 327, quoted in J. W. Foster, *Practice of Diplomacy*, 76.

sent through the diplomatic representative at the capital of the State which originated the correspondence.

§ 98. Another method is for the minister for Foreign Affairs to address a despatch to his representative at the other capital, setting forth the views of the Government with regard to the matter in hand, with an instruction to read it to the minister for Foreign Affairs, usually with an injunction to leave him a copy. Sometimes the direction is, to give a copy if it is requested. To withhold a copy may possibly, and probably will, lead to a refusal to listen to the reading of the despatch, such as was given by Canning in 1825<sup>1</sup> to the Russian ambassador, Count Lieven, and to Prince Esterhazy, Austrian ambassador

§ 99. Canning, in January 1825, had recognized the independence of Buenos Aires, Colombia and Mexico. In his despatch to Viscount Granville of March 9 he gave a very full account of what had happened. The Russian and Austrian Ambassadors called on him on successive days, and stated that they were instructed to read to him the despatches from their respective Courts on the subject, but were absolutely prohibited from giving or allowing him to take copies. He therefore requested them to give to whatever they had to say to him the form of a *verbal* communication. He explained to them the difficulty in which he would be placed, when, after listening to the reading of a long despatch, it became his duty to lay before the King, and to convey to his colleagues, a faithful impression of its contents, with no other voucher than his own individual recollection; the despatch being at the same time (as they admitted it would be) in the hands of every Russian, Austrian and Prussian mission in Europe. Expressions in these despatches might easily escape his notice at one hearing which might afterwards be

<sup>1</sup> De Martens-Geffcken, i. 170, where only Lieven is mentioned; the letter to Lord Granville of March 9 is in Stapleton, *George Canning and His Times*.

circulated in Europe as having been addressed to the British Government, and listened to without a reply. Facts might be stated in them which, if he had opportunity of reflection and reference, he could readily contradict or explain, but which, if they remained uncontradicted or explained, would be taken as admitted for all time to come. He reminded Count Lieven of a despatch on the affairs of Turkey and Greece which the latter had communicated to him in the previous January, of which Count Lieven had also been prohibited from giving a copy. H. E. sense of justice had led him to transgress the prohibition. But what would have been his situation, as a responsible minister, if a despatch professing to give an account of recent and important transactions, but fraught with errors both of assertion and omission of the gravest kind—errors which it was not possible to detect and expose without reference to a long series of correspondence and an accurate comparison of dates as well as of facts; what, he said, would have been his situation as a responsible minister, if that despatch were read to him only once, had then been circulated throughout Europe, as a charge which the British Government had borne to hear, and of which it had forborne to offer any refutation. He referred Prince Esterhazy to certain rumours which had lately prevailed in Paris respecting some supposed despatch or Note of Prince Metternich's, containing expressions of a very unmeasured kind on the subject of Spanish-America. No such Note had come to his knowledge. He found the impression among the Foreign Ministers to be that some such paper *was* written, in which such expressions *were* used, in the first ebullition of Prince Metternich's feelings, but these expressions were afterwards, upon reflection, recalled. If so, though recalled, they had nevertheless transpired. He observed to Esterhazy that as yet he could say truly that he knew nothing of any despatch from Metternich. But if he once consented to *hear* a despatch on the same



subject, of which he was not to retain a copy, it would be in vain that, six months later, he should attempt to contradict, on no other testimony than his own recollection of so cursory a communication, whatever it might suit the policy of any foreign Power, or Foreign Minister, to quote as the contents of that despatch. He therefore felt bound not to listen to the reading of any despatch without being allowed to retain a copy of it, but was perfectly willing to receive any *verbal* communication which they might wish to make. As soon as they had left he noted down his understanding and impression of what they had said, and sent his minutes to them respectively for their approbation or correction. These minutes were returned to him—that of Lieven considerably enlarged, Esterhazy's with one alteration. The Prussian minister, Baron Maltzahn, was with Canning the third day. He did not propose to read a despatch, but made a verbal statement, of which Canning sent him a minute, and which he returned as containing *mot-à-mot* the matter of his communication. Canning described the tone of Prussia as much harsher than that of the other allies, for what reason it was difficult to imagine, unless it were supposed that her interest in Spanish-American affairs was exactly in inverse proportion to the concern she had, or was likely to have, in them. Granville, the Ambassador in Paris, was instructed to communicate the three minutes to the French Minister for Foreign Affairs, and also to his diplomatic colleagues, taking every opportunity of declaring that these were the *only* communications which had been addressed to the British Government on the subject to which they related by the Courts of Petersburg, Berlin, or Vienna, and also that if any copies or extracts were being circulated of other supposed despatches or Notes on that subject, purporting to have been addressed to the British Government by those Courts or by any one of them, such extracts or copies must be fabrications. Canning



did not expect that the King would command him to give any answer to the contents of the three minutes. The Emperor of Russia had expressly deprecated any further discussion. The Austrian declaration, Canning added, was unexceptionable, and formed so strong a contrast with the language injuriously ascribed to Metternich by public report at Paris, that it might be considered as a virtual contradiction of that report.<sup>1</sup>

§ 100. The following is a Note in the third person, which completes the record in § 571 of the refusal of the French Government to ratify the quintuple treaty for the suppression of the Slave Trade, signed at London, December 20, 1841.

Londres, le 8 novembre, 1842.

Le Protocole du 20 [19] février, 1842, étant resté ouvert pour la France, le Soussigné, Ambassadeur Extraordinaire et Plénipotentiaire de Sa Majesté le Roi des Français près Sa Majesté Britannique, a l'honneur d'informer Son Excellence le Comte Aberdeen, Principal Secrétaire d'État de Sa Majesté Britannique pour les Affaires Étrangères, d'après les instructions qu'il vient de recevoir, que le Gouvernement du Roi, ayant pris en grande considération les faits graves et notoires qui, depuis la signature de la Convention du 20 décembre, 1841, sont survenus à ce sujet en France, a jugé de son devoir de ne point ratifier la dite Convention.

Le Soussigné doit ajouter, également d'après les ordres de son Gouvernement, que cette ratification ne devant non plus avoir lieu plus tard, il n'existe désormais, en ce qui concerne la France, aucun motif pour que le Protocole demeure ouvert.

Le Soussigné, etc.  
[Signature].

Son Excellence  
le Comte Aberdeen, K.T.

§ 101. On the occasion of the annexation of Bosnia and Herzegovina by Austria-Hungary in 1908, that Government having informed the other governments who were parties to the Treaty of Berlin in 1878 of the

<sup>1</sup> P.R.O., F.O. 27/327. The note of Esterhazy's communication is in F.O. 7/190; Lieven's in F.O. 65/151; Maltzahn's in 64/145.

signature of a protocol with the Turkish Government, and requested their assent to the abrogation of Article 25 of that treaty, the Powers, one after another, notified their consent. That article provided that those provinces of the Turkish empire should be "occupied and administered" by Austria-Hungary. We give a translation of the Note of the German ambassador and a transcript of that of the British ambassador in reply to this request.

The Imperial and Royal Austro-Hungarian Government having informed the Imperial German Government of the signature of the Protocol relating to Bosnia and Herzegovina, which has been concluded with the Sublime Porte, and having further requested assent to the abrogation of Article 25 of the Treaty of Berlin, the undersigned Imperial German ambassador, under instructions from his Government, has the honour to make known to His Excellency Baron d'Aehrenthal, the Imperial and Royal Minister of the Imperial and Royal House and of Foreign Affairs, that the Imperial Government formally and without reserve gives its assent to the abrogation of Article 25 of the Treaty of Berlin.

The Undersigned, etc.

VON TSCHIRSCHKY.

Vienna, April 7, 1909.

His Excellency,

Baron d'Aehrenthal, etc., etc., etc.

That of the British ambassador was in the first person

Vienna, April 17, 1909.

Monsieur le Ministre d'Etat,

In reply to the communication which the Austro-Hungarian ambassador in London made to Sir Edward Grey on the 3rd instant, I have the honour to inform Your Excellency that His Britannic Majesty's Government give their consent to the suppression of Article 25 of the Treaty of Berlin. I avail, etc.

FAIRFAX L. CARTWRIGHT.

To judge from the correspondence reproduced in the volume of "Diplomatic Correspondence between the United States and belligerent Governments relating to Neutral Rights and Commerce," published at New York

in 1915, the practice at both Berlin and Vienna appears to have been for the German and Austro-Hungarian Foreign Offices to address Notes in the third person to foreign Ambassadors.

§ 102. A *Note Verbale* is in the third person, but neither addressed nor signed. It should, however, terminate with a formula of courtesy (see below, § 109). It is often used for the mere record of a conversation, or merely in order to put a question.<sup>1</sup> Pasquier defines it thus—

“ C’est une expression usitée dans le langage diplomatique. Elle veut dire une pièce dont le contenu doit être pris en sérieuse considération, très importante, mais qui n’est pas destinée à être rendue publique. C’est comme on disait une importante déclaration faite de vive voix, puis recueillie sur le papier pour n’être pas oubliée.”

And certainly the paper in respect of which he gives this definition was not lacking in importance. As not many *Notes Verbales* are to be met with in print, it seems worth while to reproduce it here. It was framed by Pasquier in conjunction with the Duc de Richelieu, and despatched to Laybach with instructions to communicate it to all the plenipotentiaries assembled at the “ Congress,” and to ask for its reproduction in the protocol of the sittings.

“ La déclaration que la cour impériale et royale vient de publier relativement aux affaires de Naples, offre un passage qui a dû attirer l’attention du gouvernement de Sa Majesté Très Chrétienne et qui le met dans l’indispensable nécessité d’entrer dans quelques explications tendant à ne laisser subsister aucune obscurité sur sa conduite et ses véritables dispositions.

“ Le passage dont il s’agit est celui où le cabinet autrichien, après avoir fait l’exposé de l’état de choses produit par les événements survenus dans le royaume des Deux-Siciles, indique que, dans les conférences de Troppau, il a été entièrement d’accord et sur toutes les questions avec les cours de Russie et de Prusse, que des considérations d’un grand poids

<sup>1</sup> García de la Vega, 209 ; De Martens-Geffcken, iii. 3.

ont engagé le gouvernement britannique à ne pas les partager et le cabinet français à n'y accéder qu'avec des restrictions.

" Il importe au gouvernement français de bien établir quel est le sens précis de ces dernières expressions.

" Les délibérations de Troppau ont eu pour objet : 1<sup>e</sup>, d'établir un système de principes généraux pour fixer le droit d'intervention réciproque dans les affaires intérieures des États ; 2<sup>e</sup>, de faire l'application de ces principes aux affaires du royaume de Naples.

" La France, de même que l'Angleterre, est restée étrangère aux discussions qui ont eu lieu sur le premier point, et elle n'a ni directement ni indirectement adhéré au système proposé. Le gouvernement du Roi ne s'est pas cru, comme celui de Sa Majesté Britannique, dans l'obligation de rendre publique son opinion à ce sujet, mais lorsqu'il a été dans le cas de la faire connaître soit à ses alliés, soit à d'autres cours, il n'a pas dissimulé qu'elle était conforme à celle du cabinet anglais. Maintenant il déclare, en tant que besoin est, qu'il ne prévoit aucune hypothèse où il lui fût possible d'admettre le système en question comme base de sa conduite.

" Quant au second point, le principe n'ayant pas été admis par la France, sa conduite ultérieure dans les affaires de Naples ne saurait être considérée comme en étant l'application. Le gouvernement français est parti d'une autre base. Pénétré des avantages que devaient offrir des mesures pacifiques et amicales, il s'est constamment fait un devoir de coopérer à toutes celles qui avaient ce caractère. C'est avec ce sentiment que le Roi s'est empressé d'appuyer la démarche faite auprès du roi de Naples, pour l'inviter à se rendre à Laybach, c'est également en partant de la même base que Sa Majesté Très Chrétienne s'était associée à ses alliés pour engager le Souverain Pontife à se porter pour médiateur, dans le cas où le roi des Deux-Siciles n'eût pas eu la possibilité de remplir lui-même cette noble et salutaire fonction.

" Telles sont les seules mesures arrêtées à Troppau entre les cours d'Autriche, de Prusse et de Russie, auxquelles la France ait pris part par les motifs ci-dessus exposés. Elle a porté le même esprit de conciliation dans les conférences de Laybach. Ses plénipotentiaires n'ont pris sur eux de donner leur adhésion aux dernières démarches des cabinets de Prusse, d'Autriche et de Russie et d'inviter le chargé d'affaires du roi de<sup>1</sup> Naples de les appuyer que parce qu'ils ont cru y voir un moyen d'épargner au royaume des Deux-Siciles les maux de la guerre et de garantir le repos du reste de l'Italie. Les

<sup>1</sup> *De* should be à.

intentions du gouvernement français ne sont pas de nature à changer, et si malheureusement la prévoyance des cours alliées était trompée et que le fléau des hostilités dût affliger les Deux-Siciles, il chercherait dans la neutralité que ses principes lui font un devoir d'observer les moyens d'en adoucir les rigueurs et d'en abrégier la durée."<sup>1</sup>

Both as regards the place and manner of the composition of this paper, and its intrinsic importance, it seems more entitled to be termed a *pro-memoriâ* than a *note verbale*.

§ 103. A *mémoire*, also called *memorial*, *memorandum* or *pro-memoriâ*, is often a detailed statement of facts and of arguments based thereon, not differing essentially from a Note, except that it does not begin and end with a formula of courtesy, need not be signed, or dated, but it is convenient to deliver it by means of a short covering Note. There are numerous examples in the American volume of Diplomatic Correspondence mentioned above in § 101.<sup>2</sup> In earlier times these were often termed *déduction*, or *exposé de motifs*. In 1753 Frederick the Great caused a *Pro-memoriâ*, accompanied by an *Exposé de motifs*, to be presented to the British Government respecting the capture of Prussian and neutral ships, carrying cargo belonging to Prussian subjects, which had been condemned as good prize by the English courts. The reply was made in the form of a Note from the Secretary of State, enclosing a Report by the Law Officers of the Crown, which latter, was in its essence a counter-memorandum.<sup>3</sup> A more modern instance is the *mémoire* by Metternich in 1846 respecting the incorporation of the city and territory of Cracow in the Austrian Empire. This was delivered by the Austrian diplomatic representatives in Paris and London to the French and British Governments. The French reply was in the form of a despatch from the French Foreign Minister to the French diplomatic agent at Vienna, who was in-

<sup>1</sup> *Mémoires du Chancelier Pasquier*, v. 150.

<sup>2</sup> See pp. 84, 89, 96, 125, 141, 176, 178, 216, 232, 233, 234, 235, 238.

<sup>3</sup> Satow, *The Silesian Loan*, etc. 77.



structed to communicate it to Prince Metternich, and to deliver a copy to him.<sup>1</sup>

§ 104. *Note Collective.*

This is a comparatively rare form of diplomatic correspondence. It involves very close relations, amounting almost to an alliance, between the Powers whose representatives sign it, and it is unlikely to be regarded in a very friendly light by the Power to which it is addressed. The only example we have met with is one addressed by the ministers of Austria, Great Britain, Prussia and Russia to the French Government, represented by the Duc de Richelieu, towards the close of the Congress of Aix-la-Chapelle (see § 462), and is dated November 4, 1818. It is in the third person, and undertakes that the occupation of French territory by the allied forces shall terminate.

“ Les soussignés, ministres des cabinets d’Autriche, de la Grande-Bretagne, de Prusse et de Russie, ont reçu l’ordre de leurs augustes maîtres d’adresser à S. Exc. M. le duc de Richelieu la communication suivante :

“ Appelés par l’article 5 du traité du 20 novembre 1815 à examiner, de concert avec S. M. le roi de France, si l’occupation militaire d’une partie du territoire français, arrêtée par ledit traité, pourrait cesser à la fin de la troisième année, ou devrait se prolonger jusqu’à la fin de la cinquième, LL. MM. l’empereur d’Autriche, le roi de Prusse, et l’empereur de toutes les Russies se sont rendus à Aix-la-Chapelle, et ont chargé leurs ministres de s’y réunir en conférence, avec les plénipotentiaires de S. M. le roi de France et ceux du roi de la Grande-Bretagne, afin de procéder à l’examen de cette question importante.

“ L’attention des ministres et plénipotentiaires a dû se fixer avant tout, dans cet examen, sur l’état intérieur de la France ; elle a dû porter également sur l’exécution des engagements contractés par le gouvernement français envers les puissances co-signataires du traité du 20 novembre 1815.

“ L’état intérieur de la France ayant été depuis longtemps le sujet des méditations suivies des cabinets, et les plénipotentiaires réunis à Aix-la-Chapelle s’étant mutuellement

<sup>1</sup> De Martens-Geffcken, iii. 8. Other examples in the same volume.



communiqués les opinions qu'ils s'étaient formées à cet égard, les augustes souverains, après les avoir pesées dans leur sagesse, ont reconnu avec satisfaction que l'ordre de choses heureusement établi en France par la restauration de la monarchie légitime et constitutionnelle, et le succès qui a couronné jusqu'ici les soins paternels de S. M. Très-Chrétienne, justifient pleinement l'espoir d'un affermissement progressif de cet ordre de choses si essentiel pour le repos et la prospérité de la France, et si étroitement lié à tous les grands intérêts de l'Europe.

“ Quant à l'exécution des engagements, les communications que, dès l'ouverture des conférences, M. le plénipotentiaire de S. M. Très-Chrétienne a adressées à ceux des autres puissances n'ont laissé aucun doute sur cette question, en prouvant que le gouvernement français a rempli avec l'exactitude la plus scrupuleuse et la plus honorable toutes les clauses des traités et conventions du 20 novembre, et en proposant pour celles des clauses dont l'accomplissement était réservé à des époques plus éloignées des arrangements satisfaisants pour toutes les parties contractantes.

“ Tels étant les résultats de l'examen de ces graves questions, LL. MM. II. et RR. se sont félicitées de n'avoir plus qu'à écouter leurs sentiments et leurs vœux personnels, qui les portaient à mettre un terme à une mesure que des circonstances funestes et la nécessité de pourvoir à leur propre sûreté et à celle de l'Europe avaient pu seules leur dicter.

“ Dès lors, les augustes souverains se sont décidés à faire cesser l'occupation militaire du territoire français, et la convention du 9 octobre a sanctionné cette résolution. Ils regardent cet acte solennel comme le complément de la paix générale.

“ Considérant maintenant comme le premier de leurs devoirs celui de conserver à leurs peuples les bienfaits que cette paix leur assure, et de maintenir dans leur intégrité les transactions qui l'ont fondée et consolidée, LL. MM. II. et RR. se flattent que S. M. Très-Chrétienne, animée des mêmes sentiments, accueillera avec l'intérêt qu'elle attache à tout ce qui tend au bien de l'humanité et à la gloire et à la prospérité de son pays, la proposition que LL. MM. II. et RR. lui adressent d'unir dorénavant ses conseils et ses efforts à ceux qu'elles ne cesseront de vouer à l'accomplissement d'une œuvre aussi salutaire.

“ Les soussignés, chargés de prier M. le duc de Richelieu de porter ce vœu de leurs augustes souverains à la connaissance du roi son maître, invitent en même temps S. Exc. à

prendre part à leurs délibérations présentes et futures, consacrées au maintien de la paix, des traités sur lesquels elle repose, des droits et des rapports mutuels établis ou confirmés par ces traités et reconnus par toutes les puissances européennes.

“ En transmettant à M. le duc de Richelieu cette preuve solennelle de la confiance que leurs augustes souverains ont placée dans la sagesse du roi de France et dans la loyauté de la nation française, les soussignés ont l'ordre d'y ajouter l'expression de l'attachement inaltérable que LL. MM. II. et RR. professent envers la personne de S. M. Très-Chrétienne et sa famille, et de la part sincère qu'elles ne cessent de prendre au repos et au bonheur de son royaume.

“ Ils ont l'honneur d'offrir en même temps à M. le duc de Richelieu l'assurance de leur considération toute particulière.<sup>1</sup>

“ METTERNICH.	HARDENBERG.
CASTLEREAGH.	BERNSTORFF.
WELLINGTON.	NESSSELRODE.
	CAPODISTRIAS.”

“ Aix-la-Chapelle, le 4 novembre, 1818.”

#### Dignified reply of the Duc de Richelieu—

“ Le soussigné, ministre et secrétaire d'État de S. M. Très-Chrétienne, a reçu la communication que LL. Exc. MM. les ministres des cabinets d'Autriche, de la Grande-Bretagne, de Prusse et de Russie lui ont fait l'honneur de lui adresser le 4 de ce mois, par ordre de leurs augustes souverains. Il s'est empressé d'en donner connaissance au roi son maître. S. M. a reçu avec une véritable satisfaction cette nouvelle preuve de la confiance et de l'amitié des souverains qui ont pris part aux délibérations d'Aix-la-Chapelle. La justice qu'ils rendent à ses soins constants pour le bonheur de la France, et surtout à la loyauté de son peuple, a vivement touché son cœur. En portant ses regards sur le passé, et en reconnaissant qu'à aucune autre époque, aucune nation n'aurait pu exécuter avec une plus scrupuleuse fidélité des engagements tels que ceux que la France avait contractés, le roi a senti qu'elle était redevable de ce nouveau genre de gloire à la force des institutions qui la régissent, et il voit avec joie que l'affermissement de ces institutions est regardé par les augustes alliés comme aussi avantageux au repos de l'Europe qu'essentiel à la prospérité de la France. Considérant que le premier de ses devoirs est de chercher à per-

<sup>1</sup> *Br. and For. State Papers*, vi. 16.

pétuer et accroître, par tous les moyens qui sont en son pouvoir, les bienfaits que l'entier rétablissement de la paix générale promet à toutes les nations ; persuadé que l'union intime des gouvernements est le gage le plus certain de sa durée, et que la France, qui ne pouvait rester étrangère à un système dont toute la force naîtra d'une parfaite unanimité de principes et d'action, s'y associera avec cette franchise qui la caractérise, et que son concours ne peut qu'augmenter l'espoir bien fondé des heureux résultats qu'une telle alliance aura pour le bien de l'humanité, S. M. Très-Chrétienne accueille avec empressement la proposition qui lui est faite d'unir ses conseils et ses efforts à ceux de LL. MM. l'empereur d'Autriche, le roi de la Grande-Bretagne, le roi de Prusse et l'empereur de toutes les Russies, pour accomplir l'œuvre salutaire qu'ils se proposent. En conséquence elle a autorisé le soussigné à prendre part à toutes les délibérations de leurs ministres et plénipotentiaires dans le but de consolider la paix, d'assurer le maintien des traités sur lesquels elle repose, et de garantir les droits et les rapports mutuels établis par les mêmes traités et reconnus par tous les États de l'Europe.

" Le soussigné, en priant LL. Exc. de vouloir bien transmettre à leurs augustes souverains l'expression des intentions et des sentiments du roi son maître, a l'honneur de leur offrir l'assurance de sa plus haute considération.

" RICHELIEU."

" Aix-la-Chapelle, le 12 novembre, 1818."

This collective note is of a friendly character. It declares in carefully chosen phrases that France is forgiven by the four monarchies for the errors of the revolutionary and Napoleonic period, and invites the King to join in their alliance for the conservation of the *status quo* established by the treaties of Paris and Vienna. It is the pardon of the repentant Magdalen.

§ 105. That the delivery of a collective note may easily be regarded as offensive by the Government to which it is addressed is shown by the steps taken at Madrid, after the Congress of Verona, by the three despotic monarchies, Austria, Prussia and Russia, with which the French Cabinet had been induced to combine. The object of the proposed diplomatic demonstration was to compel the Spanish Government to

adopt modifications in the Constitution of 1812, which Ferdinand VII had been driven to accept against his will. The idea of a collective note was set aside as being too irritating. It was then agreed that the minister of each of the four Powers should present a separate note, which, if not actually worded identically, should be of the same tenor. A few days later this suggestion was abandoned and replaced by that of despatches from the Governments of the four allies to their representatives at Madrid, who would make their contents known to the Spanish Government. The drafts of these despatches were framed at Verona before the meeting separated. It may be added that the communication of these despatches, which was coupled on the part of Austria, Prussia and Russia by the simultaneous withdrawal of their ministers, did not lead to a pacific solution of the question as regarded the relations between France and Spain.<sup>1</sup>

§ 106. *Notes identiques* are not always word for word exactly similar. It is, however, desirable that they should be worded as closely as possible in the same way, and be identical *quant au fond*. They should be presented, as far as possible, simultaneously. A step of this character was taken *vis-à-vis* France in November 1833 by Austria, Prussia and Russia, after the meeting of the emperors Nicholas I of Russia and Francis I of Austria, and the Crown Prince of Prussia, at München-grätz. At first it had been proposed to frame a single text, which should be adopted by all three Powers, in order to demonstrate the perfect concord that existed between the cabinets of Vienna, Berlin and Petersburg, but the old King of Prussia, who was benevolently disposed towards France, persuaded the other two sovereigns to agree that each should draw up its separate note, merely embodying in a final paragraph, in exactly

<sup>1</sup> *Mém. du Chancelier Pasquier*, v. 451.

similar terms, the declaration they had resolved to make.<sup>1</sup> This plan was accordingly carried out. First of all the Austrian *Chargé d'affaires*, Baron Hügel, called on the duc de Broglie, then French Minister for Foreign Affairs, read to him Metternich's despatch and left a copy. On the following day Baron Werther presented himself, and offered to read, or to let the duc read, the despatch he had received from Ancillon, the Prussian Minister for Foreign Affairs. Broglie read it, found it moderate enough, and gave it back. Last of all arrived Pozzo di Borgo, who said he need not exhibit to him the whole of Nesselrode's despatch, and confined himself to reading the last few phrases, which repeated textually the conclusion of the Austrian and Prussian despatches. The Note is described as being directed against a revolutionary propaganda which was alleged to be carried on in France against the peace and good order of neighbouring states. It was feared that it might result in disturbances calling for assistance in their suppression, which would not be refused.<sup>2</sup> Any attempt, it was added, to oppose such assistance being afforded would be regarded by each of the three Powers concerned as an act of hostility against itself.

The Prussian despatch was conceived in a tone of moderation, which contrasted with the threatening and hostile character of the Austrian, while the Russian Cabinet was evidently unwilling to go as far as the latter.

§ 107. The formal parts of a note are : (1) *l'appel* or *inscription* ; (2) *le traitement* ; (3) *la courtoisie* ; (4) *la souscription* ; (5) *la date* ; (6) *la réclame* ; (7) *la suscription*.

(1) is the title of the person addressed, as *Sire* (to a sovereign), *Monseigneur*, *Monsieur le Ministre* ; *Mon-*

<sup>1</sup> d'Haussonville, i. 46.

<sup>2</sup> Duc de Broglie, despatch to Berlin, and circular to French diplomatic agents, in De Martens-Geffcken, iii. 101.



*sieur le Comte*, or simply *Monsieur* if he is a commoner, bearing no title.

It is placed *en vedette*, *i.e.* apart from the body of the letter; *en ligne*, *i.e.* at the beginning of the first line; or *dans la ligne*, *i.e.* after some words at the beginning of the letter. *En vedette* is used in ordinary correspondence. When the Head of a State writes to another Head of a State, the *appel* or *inscription* is always *en ligne*; if he is addressing a non-sovereign prince, or other important personage, the *appel* is often *dans la ligne*.

(2) *Traitement* is mentioning the person addressed by his title of courtesy, such as *Sainteté* to the Pope, *Majesté* to kings and emperors; *altesse impériale*, *altesse royale*, *altesse sérénissime*, *altesse*, *excellence*, *seigneurie excellentissime*, *seigneurie illustrissime*, *grandeur*, *éminence*.<sup>1</sup>

(3) The *courtoisie* is the complimentary phrase which concludes the letter. It may express an assurance of respect, consideration, attachment, gratitude, etc.

(4) The *souscription* is the signature. When preceded by "votre très-humble et très-obéissant serviteur" it is said to be written *en dépêche*; if by "veuillez agréer l'assurance de ma considération respectueuse," or by some similar form of words, it is said to be written *en billet*.

The former is used in circumstances of ceremony, the latter in ordinary correspondence.

(5) The *date* (Latin *data*, *i.e.* given) gives the time and place of writing. It may be placed at the top of the first page, or at the end of the letter, opposite to the signature. The latter is more formal, but the other is more usual, as well as more convenient.

(6) The *réclame* consists of the name and official designation of the person addressed. It is placed at the

<sup>1</sup> *Éminence* is said to have been invented by Cardinal Richelieu for himself. It was afterwards adopted by the other cardinals, and became generally recognized.



bottom of the first page on the left. Sufficient space must be left for this, and the writing on the first page must not come too near the bottom.

(7) *Suscription* is the address, and is a reproduction on the envelope of the *réclame*.<sup>1</sup>

Of these the complimentary phrase is subject to considerable variation.

*Examples.* A Note in the third person to the Prime Minister of Denmark from the British *Chargé d'affaires* in 1800 ends with : " En remettant cette note à Monsieur le Comte de Bernstorff, le Soussigné profite avec plaisir de cette occasion pour l'assurer de la haute considération avec laquelle il a l'honneur d'être de Son Excellence le très-humble et très-obéissant serviteur " ; while the reply has merely : " Il a l'honneur d'offrir à Monsieur Drummond l'assurance de sa considération la plus distinguée." <sup>2</sup>

Talleyrand to the papal legate at Paris, April 18, 1806—

" Le soussigné, ministre des relations extérieures, est chargé de faire connaître à Son Éminence le Cardinal Caprara, légat du Saint-Siège, que, etc." ; winding up with : " Le soussigné à l'honneur de renouveler à Son Éminence Monsieur le Cardinal Caprara l'assurance de sa très-haute considération." <sup>3</sup>

In another case it was : " Son Éminence est priée de mettre la note qu'il [*i.e.* le soussigné] a l'honneur de lui adresser sous les yeux de son gouvernement, et d'agréer les assurances de sa respectueuse considération." <sup>4</sup>

§ 108. In February 1806 Fox began a correspondence with Talleyrand, doubtless intended to pave the way for peace negotiations, with a letter informing him of a visit from a man who apparently gave a false name, the object of which was to propose a plan for the assassination of the Emperor Napoleon. It commenced with—

<sup>1</sup> Pradier-Fodéré, ii. 483.

<sup>2</sup> De Martens-Geffcken, iii. 65, 67.

<sup>3</sup> *Ibid.*, 68.

<sup>4</sup> *Ibid.*, 72.

*" 20 février, 1806.**" MONSIEUR LE MINISTRE, . . .**" J'ai l'honneur d'être, avec le plus parfait attachement, Monsieur le Ministre, votre très-obéissant serviteur."*

Talleyrand's reply—

*" 5 mars, 1806.**" MONSIEUR,**" J'ai mis la lettre de votre Excellence sous les yeux de Sa Majesté. . . .**" Je vous prie seulement d'agréer l'assurance de ma haute considération."*

And then it goes on, alternately—

*" 26 mars, 1806.**" MONSIEUR,**" L'avis que votre Excellence m'a donné. . . .**" J'ai l'honneur d'être avec la plus haute considération monsieur, de votre Excellence le très-humble et très-obéissant serviteur."**" 1 avril, 1806.**" MONSIEUR, . . .**" J'ai l'honneur d'être avec la plus haute considération monsieur, de votre Excellence le très-humble et très-obéissant serviteur."**" ce 8 avril, 1806.**" MONSIEUR,**" Je n'ai reçu qu'hier votre dépêche du 1<sup>er</sup> courant. Avant d'y répondre, permettez-moi d'assurer votre Excellence que. . . .**" J'ai l'honneur d'être avec la considération la plus distinguée, monsieur, de votre Excellence le très-humble et très-obéissant serviteur."**" le 16 avril, 1806.**" MONSIEUR,**" Je viens de prendre les ordres de Sa Majesté l'Empereur et Roi, sous les yeux de qui je m'étais empressé de mettre la dépêche que votre Excellence m'a fait l'honneur de m'écrire en date du 8 avril. . . .**" Agréez, monsieur, etc."**" ce 21 avril, 1806.**" MONSIEUR,**" J'ai reçu avant-hier la dépêche de votre Excellence, du 16 de ce mois. . . .**" Je vous prie d'agréer les assurances de ma considération la plus distinguée."*

" J'ai l'honneur d'être, de votre Excellence, le très-humble et très-obéissant serviteur."

" le 2 juin, 1806.

" MONSIEUR,

" J'ai mis sous les yeux de l'Empereur la dernière lettre que votre Excellence m'a fait l'honneur de m'écrire. . . .

" Agréez, Monsieur, l'assurance de ma plus haute considération."

" ce 14 juin, 1806.

" MONSIEUR,

" J'ai reçu, il y a quelques jours, la dépêche de votre Excellence en date du 2 du mois courant. . . .

" J'ai l'honneur d'être, avec la considération la plus distinguée, de votre Excellence, le très-humble et très-obéissant serviteur."

And a postscript ending with

" Agréez tous mes hommages." <sup>1</sup>

As is well known, this attempt at negotiation failed, mainly because Great Britain refused to conclude peace apart from her allies.

§ 109. *French usage, since 1900.*

To the Nuncio and foreign Ambassadors.

*Appel en vedette*): Monsieur le Nonce, ou Monsieur l'Ambassadeur.<sup>2</sup>

*Traitement*: votre Excellence.

*Courtoisie*: Agréez les assurances de la très-haute considération avec laquelle j'ai l'honneur d'être, Monsieur le Nonce, *or* Monsieur l'Ambassadeur.

De votre Excellence<sup>3</sup>

le très humble et très

obéissant serviteur.

*Date*: à Paris, le . . . 19 . . .

*Réclame*: A Son Excellence Monseigneur . . . Nonce du Saint-Siège apostolique, *or* A Son Excellence Monsieur

<sup>1</sup> Lord John Russell, Mem. and Corres. of C. J. Fox, iv. 145.

<sup>2</sup> As Ambassadors represent the very person of the sovereign who has accredited them the title, "Ambassador" takes precedence of the heraldic title in the *Appel* and *Courtoisie*.

<sup>3</sup> *Altesse*, *or* *Altesse Sérénissime*, if the case requires it.

. . . or Monsieur le . . . (*titre héraldique, s'il y a lieu*), Ambassadeur de Sa Majesté l'Empereur de . . ., or le Roi de . . . près la République française.

To foreign Envoys Extraordinary and Ministers Plenipotentiary.

*Date* : A Paris, le . . . 19 . . .

*Appel (en vedette)* : Monsieur le Ministre, or Monsieur le . . . (*titre héraldique, s'il y a lieu*).

*Traitement* : Vous.<sup>1</sup>

*Courtoisie* : Agréez les assurances de la haute considération avec laquelle j'ai l'honneur d'être, Monsieur le Ministre (*titre héraldique, s'il y a lieu*).

Votre très humble et très  
obéissant serviteur.

*Réclame* : A Monsieur . . . or Monsieur le . . . (*titre héraldique, s'il y a lieu*), Envoyé extraordinaire et Ministre plénipotentiaire de . . . près la République française.

To Foreign Ministers resident, the same as the foregoing, except that the *appel* is written *en ligne*.

To Foreign *Chargés d'affaires*.

*Date* : A Paris, le . . . 19 . . .

*Appel (en ligne)* : Monsieur le Chargé d'affaires or Monsieur le . . . (*titre héraldique, s'il y a lieu*).

*Traitement* : Vous.

*Courtoisie* : Agréez, Monsieur le Chargé d'affaires, or Monsieur le . . . (*titre héraldique, s'il y a lieu*), les assurances de ma considération la plus distinguée.

*Réclame* : A Monsieur . . . or Monsieur le . . . (*titre héraldique, s'il y a lieu*), Chargé d'affaires de . . . près la République française.

Other rules of the French Foreign Office.

<sup>1</sup> Notice that an envoy does not receive the *traitement* Excellency.

Letters addressed by the Minister for Foreign Affairs to the representatives of foreign Powers accredited to the French Republic are written on folio paper with gilt edges.

The Agents of the Ministry for Foreign Affairs in their correspondence with the authorities of the foreign country in which they are stationed must follow the forms and the rules laid down by the Head of the Diplomatic Mission in accordance with local usage.

*Notes verbales* destined for Foreign Representatives accredited at Paris are written on folio paper with gilt edges. They have neither *appel* nor *réclame*.

The *Courtoisie* is : Le Ministre des Affaires étrangères saisit cette occasion d'offrir à . . . les assurances de sa très haute considération, *or* haute considération, *or* considération la plus distinguée, and the date is written on the next line below.

*Notes pro-memoriâ* destined for Foreign Representatives accredited at Paris are written on square paper with gilt edges. They have neither *appel* nor *réclame*, and as they are to be delivered from one person to another they do not require a *courtoisie*. The date is written on the line below the last word of the text.

*Abbreviations* such as "S. M." for "Sa Majesté," "S. A." for "Son Altesse," "S. Exc." for "Son Excellence," "S. E." for "Son Éminence," "Mgr." for "Monseigneur," "M." for "Monsieur," are only allowed under the double condition (1) that the name or the title of the person follows immediately, and (2) that the document be not intended to come into the hands of the person so designated. Where both of these conditions are present the use of abbreviation is imperative. Thus "dans votre entretien avec S. Exc. l'Ambassadeur de . . . vous," *but* "Veuillez faire observer à Son Excellence que . . ." *or* "le Ministre des Affaires étrangères présente ses compliments à Son Excellence l'Ambassadeur de . . . et a l'honneur de Lui rappeler que . . ."

The expressions "Votre Majesté," "Votre Altesse,"

“Votre Excellence,” “Prince,” Princesse,” “Madame,” “Mademoiselle,” and heraldic titles may not ever be abbreviated.

*Forms used in addressing foreign sovereigns—*

*Appel (en vedette)* : “Sire,” or “Madame.” To the Pope, “Très-Saint-Père.”

*Traitement* : “Votre Majesté,” or “Votre Majesté Impériale,” or “Votre Majesté Impériale et Royale.” To the Pope, “Votre Sainteté.”

*Courtoisie* : “Je suis avec respect.” To the Pope, “Avec un profond respect.”

“Sire,” or “Madame.” To the Pope, “Très-Saint-Père.”

“De Votre Majesté,” or “Votre Majesté Impériale,” or “Votre Majesté Impériale et Royale.” To the Pope, “De Votre Sainteté.”

Le très humble et très  
obéissant serviteur.

*Date.*

*To Presidents of Foreign Republics—*

*Appel (en vedette)* : Monsieur le Président.

*Traitement* : Votre Excellence.

*Courtoisie* : Je suis avec respect,

Monsieur le Président,

De Votre Excellence,

Le très humble et très  
obéissant serviteur.

*Date* : A Paris, le . . . 19 . . .

*To Princes or Princesses of Sovereign Families, to reigning Princes and Princesses—*

*Appel (en vedette)* ; Monseigneur, or Madame.

*Traitement* : Votre Altesse (Impériale, Royale, Sérénissime).



*Courtoisie* : Je suis avec une respectueuse considération,

Monseigneur, *or* Madame,

De Votre Altesse (Impériale, Royale, Sérénissime).

Le très humble et très

obéissant serviteur.

*Date* : A Paris, le . . . 19 . . .

*Réclame* : A Son Altesse (Impériale, Royale, Sérénissime), Monseigneur le Prince X . . ., *or* Madame la Princesse X . . .

*To Foreign Cabinet Ministers—*

*Appel (en vedette)* : Monsieur le Ministre, *or* Monsieur le . . . (*titre héraldique, s'il y a lieu*).

*Traitement* : Votre Excellence.

*Courtoisie* : Veuillez agréer, Monsieur le Ministre, *or* Monsieur le . . . (*titre héraldique, s'il y a lieu*), les assurances de ma haute considération.<sup>1</sup>

*Date* : A Paris, le . . . 19 . . .

*Réclame* : A Son Excellence Monsieur . . . *or* Monsieur le . . . (*titre héraldique, s'il y a lieu*), Ministre de . . . de Sa Majesté l'Empereur de . . . *or* le Roi de . . .

The French Chancery may be safely taken by other Chanceries as a model in matters of etiquette, and for that reason we have not hesitated to give these details.

#### § 110. *Belgian usage.*

To an Envoy Extraordinary and Minister Plenipotentiary—

*Courtoisie* : Haute considération.

*Traitement* : Monsieur le Ministre, *or* the title of nobility.

*Réclame* : A Son Excellence Monsieur . . . Envoyé extraordinaire et Ministre plénipotentiaire de S. M. le Roi de . . . à Bruxelles.

<sup>1</sup> For the Chancellors, Ministers of State, or Prime Ministers of the Great Powers, the *courtoisie* uses "*la très haute considération*."

To the Nuncio—

*Courtoisie* : Très-haute considération.

*Traitement* : Monseigneur.

*Réclame* : A Son Excellence Monseigneur . . . Nonce apostolique à Bruxelles.

To a Minister resident—

*Courtoisie* : Considération la plus distinguée.

*Traitement* : Monsieur le Ministre.

*Réclame* : A Monsieur . . . Ministre résident de S. M. le Roi de . . . à Bruxelles.

To a Chargé d'affaires—

*Courtoisie* : Considération très-distinguée.

*Traitement* : Monsieur le chargé d'affaires.

*Réclame* : à Monsieur . . . chargé d'affaires de . . . à Bruxelles.

To a secretary charged with the affairs of the mission during the temporary absence of its head—

*Courtoisie* : Considération distinguée.

*Traitement* : Monsieur le chargé d'affaires.

*Réclame* : A Monsieur . . . chargé d'affaires ad intérim de . . . *or* chargé des affaires de la légation de . . . à Bruxelles.<sup>1</sup>

### § III. *Spanish usage.*

*Courtoisie* : The general phrase is : Aprovecho esta oportunidad para reiterar (*or* ofrecer) à Vuestra Excelencia<sup>2</sup> las seguridades.

Additional—

To Cardinals and Nuncios : de mi más alta consideración.

To Ambassadors : de mi alta consideración.

To Envoys extraordinary and Ministers plenipotentary : de mi más distinguida consideración.

To Ministers resident : de mi muy distinguida consideración.

<sup>1</sup> García de la Vega, *Guide pratique*, 247.

<sup>2</sup> This is given also to Ministers plenipotentiary, but not to Ministers resident.

To *Chargés d'affaires* : de mi distinguida consideración.

The *appel* is—

To a Nuncio : Excelentísimo Señor, or if he is a Cardinal, Eminentísimo Señor.

To an Ambassador : Excelentísimo Señor.

To a Minister plenipotentiary : Excelentísimo Señor.

To a Minister resident : Muy Señor mio. The same to a *Chargé d'affaires*.

The *réclame* is : Señor Nuncio Apostólico, Señor Embajador de . . . Señor Ministro Plenipotenciario de . . . Señor Ministro Residente de . . . or Señor Encargado de Negocios de . . . as the case may require.<sup>1</sup>

§ 112. *English usage.*

In all official communications, foreign Ambassadors accredited in London are addressed as "Your Excellency"; all other correspondents as "My Lord," "Sir," or "Gentlemen," as the case may be.

The following terminations of notes, despatches and letters are prescribed—

To foreign Ambassadors in London :

I have the honour to be,

With the highest consideration,

Your Excellency's obedient servant.

To foreign Ministers :

I have the honour to be,

with the highest consideration,

Sir,

your obedient Servant.

To foreign *Chargés d'affaires* :

I have the honour to be,

with high consideration,

Sir,

Your obedient Servant.

To His Majesty's Ambassadors abroad :

I am, with great truth and respect

Sir (or, My Lord)

Your obedient Servant.

<sup>1</sup> de Castro y Casaleiz, i. 381.

To His Majesty's Ministers abroad :

I am, with great truth and regard,

Sir (or, My Lord)

Your obedient Servant.

To His Majesty's *Chargés d'affaires* abroad :

I am, with great truth,

Sir,

Your obedient Servant.

To the Law Officers of the Crown :

I have the honour to be,

Gentlemen,

Your obedient Servant.

To all other correspondents :

I am,

Sir (Gentlemen, My Lord),

Your obedient Servant.

In cases where an Under-Secretary of State signs in the name of the Secretary of State, the signature will be preceded by the words : " for the Secretary of State."

§ 113. *German usage*—

From the Germany Embassy in London to the British Foreign Office—

Mit der ausgezeichnetsten Hochachtung habe ich die  
Ehre zu sein

(Milord)

Eurer Excellenz

ganz gehorsamer Diener.

From the German Foreign Office (third person Notes) :

Der Unterzeichnete benutzt diesen Anlass, um dem Herrn Botschafter die Versicherung seiner ausgezeichnetsten Hochachtung zu erneuern.

Benutzt er auf diesen Anlass um dem Geschäftsträger die Versicherung seiner vorzüglichsten Hochachtung zu erneuern.

Benutzt derselbe auch diesen Anlass zur erneuten Versicherung seiner ausgezeichnetsten Hochachtung.

From the German Foreign Office (signed Notes) :

Ich benutze, etc. :

Genehmigen Sie, Herr Minister, die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

§ 114. *Lettres de chancellerie and Lettres de Cabinet.*

How sovereigns address each other in correspondence has been explained in Chapter V, § 68.

The credentials of an Ambassador are sometimes in the form of *lettres de chancellerie*, which is the most ceremonious style known, but more often in the shape of *lettres de cabinet*, which are also used for Envoys Extraordinary and for Ministers resident.<sup>1</sup> There are no corresponding terms for these in the English language.

The former are written on large paper, and are sealed with the Great Seal. A *lettre de chancellerie* begins with the *grand titre* (see § 67) of the sovereign who signs it, followed by the name and titles of the sovereign to whom it is addressed. Thus: " Nous, Charles-Jean, par la grâce de Dieu, roi de Suède et Norvège, etc. . . . à très-haut et très-puissant prince Notre frère et parent, et Notre très-cher ami Ferdinand 1<sup>er</sup>, roi du royaume de Deux-Siciles, de Jérusalem, infant, duc de Parme, grand duc héréditaire de Toscane, etc., etc., and then, leaving an interval.

Très-haut et très-puissant prince, frère et parent, très-cher ami.<sup>2</sup>

Sovereigns who write *lettres de chancellerie* to princes of rank inferior to themselves use their own titles of sovereignty without following them up with the titles of the prince to whom they are writing. Princes of rank high enough to have the right of addressing *lettres de chancellerie* to emperors and kings place their own titles at the bottom of the letter, either before or after their signature.

In the body of the letter the sovereign who is writing speaks of himself in the first person plural, *Nous*, while giving

<sup>1</sup> De Martens-Geffcken, ii. 232.

<sup>2</sup> De Martens-Geffcken, iii. 324 ; Garden, *Traité complet*, iii. 222.

to the august recipient the title of *Majesté*, or *Altesse (royale or sérénissime)*, or using simply *Vous*, according to the rank and relations of friendship which exist between them.

*Courtoisie*: The formula which ends the letter is usually *Sur ce, nous prions Dieu qu'il vous ait, très-haut, très-puissant et très-excellent prince, notre très-aimé bon frère (ami, cousin, allié) en sa sainte et digne garde.*

*Souscription*: Underneath are written, on the left, the place, date, year of the calendar and of the sovereign's reign, and lower down, to the right, his signature. *Lettres de chancellerie* are usually countersigned by the Secretary of State for Foreign Affairs.

*Lettres de chancellerie* from a sovereign to the President of a great Republic are in similar form—

N. . . . par la grâce de Dieu, roi de . . . à monsieur . . .  
Président de la République. . . .

Grand et bon ami, etc.

Sur ce, je prie Dieu, grand et bon ami, qu'il vous ait en sa sainte et digne garde.

The signature is countersigned by the Minister for Foreign Affairs or by the Chancellor, and the address is—

A Monsieur . . . Président de la République de . . .

In 1850 the Austrian chancery still used Latin for credentials—

Illustrissime Præses, honoratissime et perdilecte amice!  
Ex amicis litteris suis, etc. . . .

. . . . Quare eundem, qui amicissimæ meæ in illustrem vestram ac Gallicam Rempubicam voluntatis testis esse non recusabit, vobis, Illustrissime Præses, tanquam insigni favore suo plane dignissimum, iterumque commendo.

Dabam Viennæ 6 die 16 januarii 1850.

FRANCISCUS JOSEPHUS, imp.

Illustrissimo Præsidi inclytæ Reipublicæ Gallicæ,  
Domino Ludovico Napoleoni Bonaparto, amico meo honoratissimo et perdilecto.<sup>1</sup>

*Lettres de chancellerie* addressed by Presidents of great Republics to the rulers of monarchical states are headed with: *Le Président de la République de . . . à Sa Majesté le roi de . . .*

Très-cher et grand ami . . .

<sup>1</sup> De Martens-Geffcken, iii. 320-3.



The President of a Republic does not, of course, use the *pluralis majestatis*.<sup>1</sup>

§ 115. *A Spanish Carta de Cancelleria*—

DOÑA ISABEL II  
(Título grande)

Y en su Real Nombre y durante su menor edad, la Reina Regente y Gobernadora, al Serenísimo y Potentísimo Señor Nicolás I, por la gracia de Dios (título grande) Serenísimo y Potentísimo Señor Emperador y Rey, Hermano y Amigo Nuestro Carísimo: Sumergida en la más profunda aflicción, cumpla con el triste deber de notificar à Vuestra Majestad Imperial que Dios ha sido servido descargar un dolorosísimo golpe sobre Mi y sobre toda la Monarquía española llamando á Si á Mi caro Esposo el Señor Don Fernando Séptimo, que falleció el 29 del mes próximo pasado á las tres menos cuarto de la tarde. Participo igualmente á Vuestra Majestad Imperial el advenimiento al Trono, con el nombre de Isabel Segunda, de Mi Hija primogénita, á quien las Cortes celebradas en esta capital el 20 de Junio del presente año prestaron juramento y pleito homenaje como á Heredera de estos Reinos, habiendo yo tomado las riendas del Gobierno, en calidad de Reina Gobernadora de ellos, durante la menor edad de Mi citada Hija. En medio de tan amarga tribulación, si algún consuelo puede hallar Mi afligido ánimo, es tener la seguridad de que Vuestra Majestad Imperial me acompañará en Mi pena y que conservará á la Reina mi Hija y á Mi el mismo sincero afecto y los mismos sentimientos de cordial amistad que Vuestra Majestad Imperial ha mostrado á Mi Augusto Esposo. Y con esto rogamos á Dios, Serenísimo y Potentísimo Señor Emperador y Rey, Hermano y Amigo Nuestro Carísimo, Os conserve en su Santa y digna guarda.

Señor Mi Hermano,  
de Vuestra Majestad Imperial

Buena Hermana,

MARIA CHRISTINA.

Dada en el Palacio de Madrid á 5 de Octubre de 1833.<sup>2</sup>

§ 116. *Lettres de Cabinet*.

The ceremonial observed in this class of correspondence is much less strict than in the case of *lettres de*

<sup>1</sup> Pradier-Fodéré, i. 117.

<sup>2</sup> de Castro y Casaleiz, *Guía Práctica*, i. 795.

*chancellerie* ; between equals the style is more familiar and less formal towards inferiors ; for this reason it is the form employed by preference for the correspondence of sovereigns.

*Vedette* (or *appel*) : Monsieur mon frère (et beau-frère), madame ma sœur (et belle-sœur), monsieur mon cousin, or mon cousin.

In the body of the letter the sovereign speaks of himself in the singular, and gives to his equals the title of *Majesté*, *Altesse royale*, etc. Sometimes he makes the use of *Vous*, which he always employs in addressing princes of lower rank. The latter always speak of crowned heads as *Sire*, both in the signature and in the body of the letter.

*Courtoisie* : Some obliging or friendly expressions, which vary according to the relations between the two sovereigns, close the letter ; for example, Je saisis avec empressement cette occasion de renouveler à Votre Majesté les assurances de la haute estime et de l'amitié sincère avec lesquelles je suis de Votre Majesté le bon frère, N. (see also Chap. V, § 70).

The signature of the sovereign to such letters is not always countersigned by a Secretary of State. The letter is sealed with the privy seal, and the size of the paper is smaller than of that used for *lettres de chancellerie*.<sup>1</sup>

*Lettres de Cabinet* are usually employed for credentials of ambassadors and ministers, generally also for notifications of death, birth or marriage and for letters of congratulation and condolence.

§ 117. The President of the United States responds to *cere- monious letters* announcing the death of the ruler of a monarchical country, or of any member of the royal family, or of the birth or marriage of such princes or princesses. Ex-President Harrison commented on this practice thus : " It

<sup>1</sup> De Martens-Geffcken, iii. 325, who says that the letter is *not* countersigned. García de la Vega says the same, but gives instances of its having been done.

seems almost incongruous to notify a republican Government like ours of such an event. The form in use for an answer to such communications [the birth of a prince royal] was possibly prepared by Secretary Jefferson. It assures the happy parent of the joy felt by the President and by the people of the United States over the happy event. The language in use was so tropical that when such a congratulatory letter was presented for his signature one of our Presidents felt compelled to use the blue pencil with vigour. Perhaps, if we were to notify 'our great and good friends' the kings and queens of the earth, of the birth of every 'heir possible' to the presidency, they would break off the correspondence." It has not been the practice of the government of the United States to notify the changes of the presidency to other Governments. As to this practice Secretary Seward wrote: "We receive from all monarchical states letters announcing the births and deaths of persons connected nearly with the throne, and we respond to them in the spirit of friendship and in terms of courtesy. On the contrary, on our part, no signal incident or melancholy casualties affecting the Chief Magistrate or other functionaries of the Republic are ever announced by us to foreign states. While we allow the foreign states the unrestrained indulgence of their peculiar tastes, we carefully practice our own. This is nothing more than the courtesy of private life extended into the intercourse of nations." <sup>1</sup>

§ 118. But it appears that some republics are in the habit of notifying the election of a president, as appears from the following example of a letter in reply—

#### ALFONSO XII

Por la gracia de Dios, rey constitucional de España, etc., etc., etc.

*Al Presidente de los Estados Unidos Mejicanos.*

Mi Grande y Buen Amigo : He sabido con satisfacción, por la carte que me habéis dirigido al efecto, que habéis sido elevado á la primera magistratura de esa República. Os felicito sinceramente por la prueba de confianza que debéis á Vuestros conciudadanos, y me complazco en aseguraros que que veré con placer afianzarse y estrecharse durante Vuestro Gobierno la buena inteligencia, que tan útil es á los mutuos intereses de España y de los Estados Unidos Mejicanos.

<sup>1</sup> J. W. Foster, *The Practice of Diplomacy*, 126-7.

En tal confianza, aprovecho esta ocasión para expresar la amistad y el sincero aprecio con que soy

Grande y Buen Amigo  
 Vuestro Grande y Buen Amigo  
 (Signature)  
 El Ministro de Estado  
 (Signature)

En el Palacio de Madrid á 31 Enero de 1881.<sup>1</sup>

Similar forms of congratulation on election to the presidency are extant elsewhere than in Spain.

<sup>1</sup> de Castro y Casaleiz, i. 466. A similar formula in García de la Vega, 285, who also gives the correspondence between Louis Napoléon after the *coup d'état* of December, 2 1851, and King Leopold of Belgium.

## CHAPTER VIII

### CREDENTIALS AND FULL-POWERS

§ 119. Credentials, English example—§ 120. Mr. S. J. Reid on Lord Durham's credentials to Russia—§ 121. French credentials in 1834—§ 122. Letters of recall, addressed to a Sovereign—§ 123. Ditto, addressed to a President—§ 124. Recredential (*Récréance, Récréditif*)—§ 125. From a Republic to a King—§ 126. Full-power—§ 127. Exchange of full-powers—§ 128. Language used for full-powers—§ 129. Full-power in Latin—§ 130. Full-power in French—§ 131. Mediation of Austrian and Russian plenipotentiaries in 1783—§ 132. The Emperor's full-power—§ 133. Full-power of the King of Spain—§ 134. Latin full-powers of England and Holland in 1784—§ 135. Napoleon's full-power to General Clarke in 1806—§ 136—Modern examples: Belgian—§ 137. Spanish—§ 138. English.

#### § 119. *Letters of Credence, or Credentials.*

The form of credentials used in Great Britain is that of a *Lettre de Cabinet*, as, for example—<sup>1</sup>

Osborne House, 4th December, 1852.

SIR, MY BROTHER,

Being desirous to maintain uninterrupted the union and good understanding which happily subsist between Great Britain and France, I have made choice of Lord Cowley, a peer of my United Kingdom, a member of my Privy Council, and Knight Commander of the Most Honourable Order of the Bath, to reside at your Imperial Majesty's Court in the character of my Ambassador Extraordinary and Plenipotentiary. The long experience which I have had of his talents and zeal for my service assures me that the choice which I have made of Lord Cowley will be perfectly agreeable to your Imperial Majesty, and that he will prove himself worthy of this new mark of my confidence. I request that your Imperial Majesty will give entire credence to all that Lord Cowley shall communicate to you on my part, more especially when he shall assure your Imperial Majesty of my invariable attachment

<sup>1</sup> *Pol. Cor. Friedrichs des Grossen*, xii. 17, gives the text of Michell's credentials to George II of January 4, 1756.

and esteem, and shall express to you those sentiments of sincere friendship and regard with which I am, Sir, my Brother, your Imperial Majesty's good Sister,

VICTORIA R.

To my good Brother, the Emperor of the French."

§ 120. Mr. Stuart J. Reid, in his *Life and Letters of the First Earl of Durham*, ii. 18, quotes some phrases from the letter of credence carried by Lord Durham to the Emperor Alexander I in 1835, prefacing them with the statement that: "No Plenipotentiary could have been sent to a foreign Court with more splendid credentials than those which were given to Durham by Palmerston, under the sign of William IV." He remarks that in that document it was "expressly set forth" that the King, being desirous of giving to his Imperial Majesty the Tsar of All the Russias an "unequivocal and public testimony of our true regard, esteem and brotherly affection," had nominated "our right trusty and right well-beloved cousin and councillor John George, etc.," as ambassador extraordinary and plenipotentiary. He was to repair to the Russian court with all possible diligence in order to give the Tsar "the strongest assurances" of the King's "unabated desire to strengthen and improve the harmony and good understanding happily subsisting between us and your Imperial Majesty." Finally, the hope was expressed that the Tsar will "receive our said Ambassador in the most favourable manner, and give entire credence to everything which we have ordered him to declare in our name," not merely when presenting his credentials, but "upon every subsequent occasion which may require his opening our sentiments to your Imperial Majesty."

§ 121. Compare with this the credentials of the envoy of the King of the French to the court of Stockholm in 1834, in the form of a *lettre de chancellerie*—

Très-haut, très-excellent et très-puissant prince, notre très-cher et très-ami bon frère. Le dessein que vous avons de main-



tenir et de resserrer de plus en plus les liens de bonne harmonie qui subsistent si heureusement entre nos États et ceux de Votre Majesté ne nous permet pas de différer à donner un successeur au ministre que nous entretenions auprès d'elle. En conséquence, nous avons fait choix du . . . (*noms et titres*) et nous l'avons nommé pour résider à la cour de Votre Majesté en qualité de notre Envoyé extraordinaire et Ministre plénipotentiaire. La connaissance particulière que nous avons des qualités qui le distinguent, les preuves qu'il nous a données également de son zèle pour notre service et de son dévouement à notre personne ne nous laissent aucun doute sur la manière dont il remplira les honorables fonctions que nous lui avons confiées. Néanmoins, nous lui recommandons encore avant toute chose de ne rien négliger pour se concilier l'estime et la confiance de Votre Majesté, seul moyen de mériter notre approbation. C'est dans la conviction où nous sommes qu'il pourra complètement répondre à nos intentions à cet égard que nous prions Votre Majesté d'accueillir notre ministre avec bienveillance, et d'ajouter une créance entière à tout ce qu'il lui dira de notre part, surtout lorsqu'il lui exprimera les assurances de la sincère estime et de la parfaite amitié que nous avons pour Votre Majesté, ainsi que les vœux que nous formons pour la prospérité de ses États et la gloire de son règne. Sur ce, nous prions Dieu, très-haut, très-excellent et très-puissant prince, notre très-cher et très-ami bon frère, qu'il vous ait en sa sainte et digne garde.

Ecrit en notre palais de Neuilly, le vingt-quatrième jour du mois de juillet de l'année de grâce mil huit cent trente-quatre.  
 Votre bon frère.<sup>1</sup>

The truth is that the language of such documents as these is a matter of "common form." It may differ from reign to reign, and between one country and another, and in the credentials of an ambassador the phrases employed are more high-sounding and laudatory than those used in the case of an envoy and minister. In particular, the final phrase asking that credit may be given to all that the agent may say in the name of his Sovereign is of universal application, as being what constitutes the essential part of a letter of credence.

<sup>1</sup> de Martens-Geffcken, ii. 233. Of course, the pronouns referring to the two sovereigns, as well as the word "*cour*" ought to be written with initial capitals.

§ 122. *Letters of Recall.*

Très Haut, très Excellent, et très Puissant Prince, notre très Cher et très Aimé bon Frère et Cousin.

. . . Ayant jugé convenable au bien de Notre service de nommer le Comte de . . . Notre Ambassadeur à . . . Nous avons dû lui ordonner de prendre congé de Votre Majesté, près de laquelle il remplissait les fonctions de Notre Envoyé Extraordinaire et Ministre Plénipotentiaire. Nous ne doutons pas qu'en remplissant cette dernière fonction de son ministère, il n'en profite pour Lui exprimer sa vive reconnaissance des bontés dont Votre Majesté a bien voulu l'honorer pendant tout le temps de sa résidence à Sa Cour. Nous lui recommandons particulièrement de saisir cette même occasion pour renouveler à Votre Majesté les assurances de Notre sincère estime et de Notre parfaite amitié.

Votre bon Frère et Cousin,

(L.S.)<sup>1</sup>

LOUIS

(countersigned) PASQUIER.

Ecrit au château des Tuileries, le . . . etc., de l'an de grâce 1820, et de notre règne le 26<sup>e</sup>.

MONSIEUR MON FRÈRE, le sieur . . . ayant reçu une autre destination, la mission que Je lui avais confiée auprès de Votre Majesté vient de cesser. J'aime à croire que cet Envoyé, qui a rempli cette mission à Mon entière satisfaction, aura sû mériter la bienveillance de Votre Majesté, et J'espère qu'Elle lui permettra de lui témoigner en personne la reconnaissance dont il est pénétré pour les marques de bonté dont Votre Majesté a bien voulu l'honorer pendant le séjour qu'il a fait auprès d'Elle. Je profite Moi-même avec plaisir de cette occasion pour renouveler à Votre Majesté les assurances de la haute estime et de l'inaltérable amitié avec lesquelles je suis, Monsieur Mon Frère, de Votre Majesté.

le Bon Frère.<sup>2</sup>

(Signature).

§ 123. *To a Republic.*

Très-chers et grands Amis, Alliés et Confédérés, la satisfaction particulière que Nous avons des services du sieur Comte de . . . Notre Envoyé extraordinaire auprès de Vous, Nous aurait porté à le laisser plus longtemps dans cet emploi, si son âge et sa santé lui permettaient d'en continuer encore les fonctions. Ayant égard aux instances réitérées qu'il Nous a faites à ce sujet, Nous lui avons accordé la permission de

<sup>1</sup> Garden, *Traité complet de Diplomatie*, iii. 239.

<sup>2</sup> de Martens-Geffcken, ii. 242.

revenir auprès de Nous. Il a ordre, avant son départ, de Vous témoigner combien sont vrais les sentiments d'amitié et d'attachement que Nous avons pour Vous, et l'intérêt que Nous prendrons toujours à Vos avantages particuliers, ainsi que de Vous assurer qu'en toutes occasions Nous aimerons à Vous donner des marques de Notre estime et de Notre affection. Priant Dieu qu'il Vous ait, Très-Chers et Grands Amis, Alliés et Confédérés, en Sa sainte et digne garde. Votre Bon Ami, Allié et Confédéré.<sup>1</sup>

(Signature.)

§ 124. Recredential (*récréance, récréditif*) is the name given to the reply to a letter of recall. The examples here inserted are in the form of *Lettres de Cabinet*, but they may also be in the *Lettre de chancellerie* form. Of this there is a specimen in Garden, *Traité complet*, etc., iii. 240.

MONSIEUR MON FRÈRE,

J'ai, reçu la lettre (M. . . . M'a remis la lettre) par laquelle Votre Majesté a bien voulu M'informer qu'Elle a jugé à propos d'appeler aux fonctions de . . . Monsieur . . . qui a résidé à Ma Cour pendant . . . , en qualité de . . . de Votre Majesté. Je ne laisserai pas échapper (*or*, Je saisis avec empressement) cette occasion d'exprimer à Votre Majesté combien J'ai eu lieu d'être satisfait de la manière dont Monsieur . . . a constamment exécuté les ordres de Votre Majesté durant la mission qui l'a retenu auprès de Ma personne. Comme il n'a cessé de consacrer ses efforts au maintien et à la consolidation de l'union parfaite et des rapports d'intime amitié qui existent si heureusement entre Nos Couronnes, il s'est acquis toute Ma bienveillance, et Je n'hésite pas à le recommander, à ce titre, aux bonnes grâces de Votre Majesté. En exprimant à Votre Majesté le plaisir que Me font éprouver les témoignages d'affection qu'Elle Me donne, Je La prie de recevoir les assurances de la haute estime et de l'inviolable attachement avec lesquels Je suis. . . .

*or*—

MONSIEUR MON FRÈRE,

J'ai reçu la lettre que Votre Majesté a bien voulu m'adresser le . . . pour M'informer qu'Elle a jugé convenable de mettre un terme à la mission que Monsieur . . . remplissait près de Ma personne, en qualité de Son. . . . Je ne

<sup>1</sup> de Martens-Geffcken, ii. 243.

veux pas laisser échapper l'occasion que M'offre cette communication, sans exprimer à Votre Majesté combien j'ai eu lieu d'être satisfait de la manière dont Monsieur . . . s'est acquitté des devoirs que lui imposaient ses hautes fonctions, et à ce titre, Je me plais à le recommander aux bonnes grâces de Votre Majesté. En exprimant à Votre Majesté la satisfaction que Me font éprouver les témoignages d'amitié que J'en reçois, et en La remerciant du soin qu'Elle a pris de donner immédiatement un digne successeur à Monsieur. . . . Je Me félicite de pouvoir Lui renouveler les assurances de la haute estime et du sincère attachement avec lesquels Je suis. . . .<sup>1</sup>

or,

§125. *From a Republic to a King.*

SIRE,

Il a plu à Votre Majesté de nous faire part, par sa lettre du . . . des raisons qui ont porté Votre Majesté à rappeler . . . Son Ambassadeur extraordinaire près de nous. Il nous a envoyé cette lettre de . . . où il vient d'être appelé pour le service de Votre Majesté, et en prenant congé de nous il a renouvelé, de la manière la plus positive, les assurances de l'amitié et de l'intérêt que Votre Majesté continue à porter à notre République. Plus que personne, cet Ambassadeur, pendant le temps qu'il a résidé dans cette République, a été à même de se convaincre des sentiments de reconnaissance dont nous sommes pénétrés pour Votre Personne Royale, et du désir sincère que nous avons de voir de plus en plus se consolider l'union et la bonne harmonie rétablie entre les Etats de Votre Majesté et notre République. Comme nous avons une entière confiance en lui, nous rapportons aussi à ce qu'il Vous dira de nous, et du prix que nous attachons à l'amitié dont Votre Majesté veut bien nous honorer. Sur ce, nous prions Dieu qu'il Vous ait, Sire, en sa sainte et digne garde.<sup>2</sup>

§ 126. *Full-Powers.*

These are in the form of Letters Patent.

A diplomatic agent to whom a particular negotiation is entrusted, whether for the conclusion of a treaty or convention, or for taking part in a Congress or a Conference, requires, as a general rule, a special written

<sup>1</sup> García de la Vega, 333.

<sup>2</sup> de Martens-Geffcken, ii. 247. This *récréance* and the *lettre de rappel* on p. 114, were evidently exchanged between the French King and the Swiss Confederation.

authorization, called a full-power, from the Head of the State which he represents, whether King, Emperor or President. Exceptions to this rule occurring in the case of conferences, are mentioned in Chap. XXVI § 471 *n.*, § 489, and elsewhere ; the view taken being, that an ambassador, by the very fact of his representing his sovereign, does not always require a full-power for the discussion of political affairs at a Conference in the capital where he is accredited.

The forms used in drawing up full-powers are sufficiently shown by the examples which follow.

§ 127. Before the signature of a treaty, it is the rule that the full-powers of the plenipotentiaries must be exhibited for the purpose of verification, and when that act has been performed to the mutual satisfaction of the parties concerned, a statement is inserted in the draft to the effect that the plenipotentiaries, having either communicated, or exchanged their full-powers, or that they were furnished with full powers, these were found to be "in good and due form." A German model of such a statement is in the words "nach Austausch ihrer gut und genügend gefundenen Vollmachten." It is, however, not to be understood that an actual exchange or transference of the original documents must necessarily take place. A mere inspection will suffice, and the utmost that could be required would be the exchange of certified copies. That this was the custom in former times is evident from the practice that prevailed of publishing the text of the full powers conferred by the high contracting parties along with the treaty negotiated in pursuance of them.<sup>1</sup>

Formerly, when a Congress was held under the superintendence of one or more Mediators, the full-powers of the plenipotentiaries were handed to them for verification. At the conferences of Constantinople (1876-7) and Berlin (1884), the plenipotentiaries appointed *ad hoc* alone produced full-powers, which were

<sup>1</sup> See Jenkinson, iii. 347.



held to be unnecessary in the case of the resident diplomatic agents who represented their governments on those occasions.

§ 128. In the eighteenth century the King of Great Britain and the Emperor conferred full-powers in the Latin language ; France and Russia used French, Spain Spanish, and the United States English. For the definitive Treaty of Peace with the United States of September 3, 1783, the King's full-power was also in English. Latin was used for this purpose as late at least as 1806, for the full-powers given first to Lord Yarmouth, and afterwards to Lord Lauderdale in conjunction with him, for the abortive peace negotiations at Lille.<sup>1</sup>

§ 129. Full-power, dated April 23, 1783, to the Duke of Manchester for negotiating a treaty of peace with France.

(*Signature*) Georgius R.

Georgius Tertius, Dei Gratiâ, Magnæ Britanniæ, Franciæ, et Hiberniæ, Rex, Fidei Defensor, Dux Brunsvicensis et Luneburgensis, Sacri Romani Imperii Archi-Thesaurarius, et Princeps Elector, etc. Omnibus et singulis ad quos præsentēs hæ literæ pervenerint, salutem ! Cùm ad pacem perficiendam inter nos et bonum fratrem nostrum Regem Christianissimum, quæ jàm signatis apud Versalios, die vicesimo mensis Januarii proximè præteriti, articulis preliminariis feliciter inchoata est, eamque ad finem exoptatum perducendam, virum aliquem idoneum, ex nostrâ parte, plenâ auctoritate munire nobis è re visum sit ; cùmque perdilectus nobis et perquàm fidelis consanguineus et consiliarius noster, Georgius Dux et Comes de Manchester, Vicecomes de Mandeville, Baron de Kimbolton, Comitatus de Huntingdon Locum-Tenens et Custos Rotulorum, nobilitate generis, egregiis animi dotibus, summo rerum usu, et spectatâ fide, se nobis commendaverit, quem idcirco titulo Legati Nostri Extraordinarii et Plenipotentarii apud prædictum bonum fratrem nostrum Regem Christianissimum decoravimus, persuasumque nobis sit amplissimè ornaturum fore provinciam quam ei mandare decrevimus : Sciatis igitur quòd nos prædictum Georgium Ducem de Manchester fecimus, constituimus et

<sup>1</sup> *Papers rel. to the Negot. with France, Dec. 22, 1806, p. 65, 97.*



ordinavimus, et, per præsentés, eum facimus, constituimus et ordinamus, nostrum verum certum ac indubitatum plenipotentiarium, commissarium, et procuratorem; dantes et concedentes eidem plenam et omnimodam potestatem, atque auctoritatem, paritèr ac mandatum generale ac speciale, cum prædicto Rege Christianissimo, ipsiusque ministris, commissariis vel procuratoribus, sufficienti auctoritate instructis, cumque legatis, commissariis, deputatis et plenipotentariis aliorum principum et statuum, quorum interesse poterit, sufficienti itidem auctoritate instructis tam singulatim ac divisim, quam aggregatim ac conjunctim, congregiendi et colloquendi, atque cum ipsis de pace firmâ ac stabili, sincerâque amicitîâ et concordîâ quantociùs restituendis, conveniendi, tractandi, consulendi et concludendi; eaque omnia, quæ ità conventa et conclusa fuerint, pro nobis et nostro nomine, subsignandi, superque conclusis tractatum, tractatusve, vel alia instrumenta quotquot et qualia necessaria fuerint, conficiendi, mutuoque tradendi, recipiendique; omniaque alia quæ ad opus supradictum feliciter exequendum pertinent, transigendi, tam amplis modo et formâ, ac vi effectumque pari, ac nos, si interessemus, facere et præstare possemus: Spondentes, et in verbo regio promittentes, nos omnia et singula quæcunque à dicto nostro Plenipotentiarario transigi et concludi contigerint, grata, rata et accepta, omni meliori modo, habituros, neque passuros unquam ut in toto, vel in parte, à quopiam violentur, aut ut iis in contrarium eatur. In quorum omnium majorem fidem et robur præsentibus, manu nostrâ regiâ signatis, magnum nostrum Magnæ Britannîæ sigillum appendi fecimus. Quæ dabantur in palatio nostro Divi Jacobis die vicesimo tertio mensis Aprilis, anno domini millesimo, septingesimo octogesimo tertio, regniue nostri vicesimo tertio.<sup>1</sup>

§ 130. *Plein-pouvoir de sa Majesté Très Chrétienne.*

Louis, par la grâce de Dieu, Roi de France et de Navarre, à tous ceux qui ces présentes lettres verront, salut. Les préliminaires signés à Versailles, le vingt janvier de cette année, ont posé les fondements de la paix rétablie entre Nous, et Notre très cher et très aimé Bon Frère le Roi de la Grande Bretagne. Nous n'avons rien de plus à cœur que de consolider ce salutaire et important ouvrage par un traité solennel et

<sup>1</sup> Jenkinson, etc., iii. 347. This and the full-powers in §§ 130, 132 and 133 were printed by Jenkinson from badly transcribed copies of the originals, and should not be regarded as models of official attention to the use of capital letters in speaking of Crowned Heads.

définitif. Pour ces causes, et autres bonnes considérations à ce nous mouvant, Nous confiant entièrement en la capacité et expérience, zèle et fidélité pour notre service, de Notre très cher et bien amé le Sieur Comte de Vergennes, Notre Conseiller en tous Nos Conseils, Commandeur de Nos ordres, Chef de Notre Conseil Royal des Finances, Conseiller d'État d'Épée, Ministre et Secrétaire d'État, et de Nos Commandemens et Finances, ayant le département des affaires étrangères, Nous l'avons nommé, commis et député, et par ces présentes signées de Notre main, le nommons, commençons et députons, Notre Ministre Plénipotentiaire, lui donnant plein et absolu pouvoir d'agir en cette qualité, et de conférer, négocier, traiter et convenir, conjointement avec le Ministre Plénipotentiaire de Notre très cher et très amé Bon Frère le Roi de la Grande Bretagne, revêtu de pouvoir en bonne forme, arrêter, conclure et signer tels articles, conditions, conventions, déclarations, traité définitif, accessions, et autres actes quelconques, qu'il jugera convenables, pour assurer et affermir le grand ouvrage de la paix, le tout avec la même liberté et autorité que Nous pourrions faire nous-mêmes, si Nous y étions présents en personne, encore qu'il y eût quelque chose qui requit un mandement plus spécial qu'il n'est contenu dans ces présentes ; promettant, en foi et parole de Roi, d'avoir agréable, tenir ferme et stable à toujours, accomplir et exécuter ponctuellement, tout ce que le dit Sieur Comte de Vergennes aura stipulé et signé, en vertu du présent plein-pouvoir, sans jamais y contrevenir, ni permettre qu'il y soit contrevenu, pour quelque cause et sous quelque prétexte que ce puisse être, comme aussi d'en faire expédier Nos lettres de ratification en bonne forme, et de les faire délivrer, pour être échangées, dans le tems dont il sera convenu : Car tel est Notre plaisir. En témoin de quoi Nous avons fait mettre Notre scel à ces présentes.

Donné à Versailles le quatrième jour du mois de février, l'an de grâce mil sept cent quatre vingt trois, et de Notre Règne le neuvième.

(Signé) Louis (et sur le repli, par le Roi, La Croix Maréchal de Castries, et scellé du Grand Sceau de cire jaune).<sup>1</sup>

§ 131. The preamble to the definite Treaty of Peace and Friendship, between His Britannick Majesty and the Most Christian King, signed at Versailles, September 3, 1783, after reciting the desire of both Monarchs to put an end to the war, states that they had accepted the

<sup>1</sup> Jenkinson, etc., iii. 349.

offer made by Their Majesties the Emperor of the Romans and the Empress of all the Russias of their "Entremise et de leur médiation."

"Leurs dites Majestés le Roi de la Grande Bretagne et le Roi Très Chrétien, se faisant un devoir de donner à leurs Majestés Impériales une marque éclatante de leur reconnoissance, de l'offre généreuse, de leur médiation, les ont invitées, de concert, à concourir à la consommation du grand et salutaire ouvrage de la paix, en prenant part, comme médiateurs au traité définitif à conclure entre leurs Majestés Britannique et Très Chrétienne."

And then are given the names of the personages named to represent the mediating sovereigns, who were the Imperial ambassador and two Russian ministers plenipotentiary at Paris.

What part the Emperor of the Romans and the Empress of Russia, or their diplomatic representatives at Paris, actually took as mediators in the negotiations which led up to the treaties of Versailles with France and Spain, is not clear. At any rate, these diplomatists were recognized as having mediated,<sup>1</sup> and, simultaneously with the signature of the treaties, they signed respective declarations to the effect that, they having acted as mediators, the treaties of peace, with the separate articles, and all the clauses, conditions and stipulations therein contained, had been concluded by the mediation of the two neutral sovereigns.<sup>2</sup>

### § 132. *The Emperor's Full-Power.*

No. Josephus Secundus, Divinâ favente Clementiâ, Electus Romanorum Imperator, semper augustus, Germaniæ, Hierosolymæ, Hungariæ, Bohemiæ, Dalmatiæ, Croatia, Slavoniæ et Lodomeriæ Rex, Archi-dux Austriæ; Dux Burgundiæ, Lotharingiæ, Stirriæ, Carinthiæ et Carniolæ; Magnus Dux Hetruriæ; Magnus Princeps Transylvaniæ, Marchio Moraviæ; Dux Brabantæ, Limburgi, Lucemburgi, et Geldriæ, Wurtembergæ, Superioris et Inferioris Silesiæ, Mediolani, Mantuæ, Parmæ, Placentiæ et Guastallæ, Osveciniæ et Zatoriæ, Cala-

<sup>1</sup> F. de Martens, *Recueil*, xiii, 156.

<sup>2</sup> Jenkinson, 346, 347, 384, 385, and F. de Martens, *Recueil*, xiii, 156, 158.

briæ, Barri, Montisferrati et Teschinæ; Princeps Sueviæ et Carolopolis; Comes Habsburgi, Flandriæ, Tyrolis, Hannoniæ, Kiburgi, Goritiæ, et Gradiscæ; Marchio Sacri Romani Imperii Burgoviæ, Superioris et Inferioris Lusatiae, Mussoponti, et Nomenei; Comes Namurci, Provinciæ Valdemontis, Albimontis, Zutphaniæ, Sarwerdæ, Salmæ, et Falkensteinii; Dominus Marchiæ, Slavoniæ et Mechliniæ.

Notum testatumque omnibus et singulis quorum interest, vel quocunque demùm modo interesse potest, tenore præsentium, facimus, Intereà cùm ultimum grave bellum universum propè terrarum orbem inundaret, Nos, et Imperatoriæ totius Russiæ auctoritatis Majestas, pari animati desiderio, belli hujus calamitatibus quantocyùs finem imponendi, pronam in id voluntatem nostram sæpiùs testari non prætermisimus, ut intervenientibus communibus utriusque nostrum amicis officiis, partium belligerantium conciliatio sublevetur, et pristina pax ac sincera inter illas concordia restauretur. Pergratum Nobis intellectu communes conatus nostros optato non caruisse effectu: Posteaque quàm enim, prevalentibus inter principes bello implicitos pacatioribus animi sensibus, Res jam eò feliciter provecta fuit, ut de previis pacis conditionibus, seu articulis preliminaribus, quæ universum pacificationis opus innitatur, inter illos conventum sit, atefati serenissimi et potentissimi principes amicè à nobis petierunt, ut in consortio suæ Majestatis Imperatricis omnium Russiarum sociam salutare huic negotio manum admoveremus, firmandæque pacis, cujus fundamenta in supramemoratis præviis conditionibus prosperè jacta sunt, amica nostra interponeremus officia, quo certius conjunctis pacificatorum laboribus magnum almæ pacis opus omni ex parte absolveretur. Nos, quibus idem semper curæ fuit, eò lubentiùs eosdem animi sensus in supramemoratis principibus deprehendentes, communicatis præviè cum Imperatricis totius Russiæ Majestatis conciliis, nulli hæsimus conceptæ de utroque nostrum illorum fiduciæ satisfacere, atque delatam hanc provinciam lubenti ac grato animo in nos suscipere. Quem in finem elegimus virum illustrem et magnificum, fidelem nobis dilectum Florimundum Comitem à Mercy-Argenteau, Ordinis Aurei Velleris Equitem, conciliarium nostrum actuale intimum, atque Oratorem in Aulâ Serenissimi et Potentissimi Franciæ et Navaræ Regis commorantem, virum singularis fidei, integritatis, et rerum dexterè gerendarum peritiæ, eumque denominavimus, atque plenam illi hisce facultatem impertimur, qui, nostro nomine, pacificatoris munus in se suscipiens, consociatè cum hoc vel his, qui tam ex parte suæ Majestatis Im-

peratricis totius Russiæ, ut commediatricis, quàm ex parte reliquorum, quorum res hîc agitur, intervenientium principum ad hoc denominati, ac æquè plenâ facultate instructi erunt, consilia et operam conferat, ut interpositis amicis officiis, et communibus laboribus, tales tractatus, conventiones, vel quæcunque dispositiones in ordinem redigantur, quales ad perficiendum pacis opus necessarii esse visi fuerint; quæ omnia subscribet et signabit, et ex parte suâ etiâ tale instrumentum, vel talia instrumenta, exhibebit, quæ ad rem facientia visa, et ab illo postulata fuerint. Verbo nostro Cæsareo Regio et Archiducali spondentes, nos omnia ea, quæ vigore præsentium tabularum ab Oratore hoc nostro conclusa, promissa, et signata fuerint, rata, grataque habituros, et fidelitèr adimpleturos, ratihabitionisque nostræ tabulas, tempore convento extradi jussuros esse. In quorum fidem majusque robur has Plenipotentiarum tabulas manu nostra subscripsimus, Sigilloque nostro Cæsareo Regio et Archiducali pendente firmari jussimus.

Datum in civitate nostrâ Viennæ, die 16 Aprilis, anno Domini 1783, Regnorum nostrorum Romano-Germanici vigesimo, hereditariorum tertio.

JOSEPHUS.

W. Kaunitz Rietberg.<sup>1</sup>

The only point of interest in the full-power of the Empress of Russia, which was dated March 12, 1783, o.s., is the coupling together of "bons offices" and "médiation" in one phrase.<sup>2</sup>

§ 133. An identical series of full-powers was given for the Treaty of Peace and Friendship between his Britannick Majesty and the King of Spain, signed also at Versailles on the same day as the French treaty. Of these the full-power of his Catholick Majesty is here reproduced.

Don Carlos, por la Gracia de Dios, Rey de Castilla, de Leon, de Aragon, de las Dos Sicilias, de Jerusalem, de Navarra, de Granada, de Toledo, de Valencia, de Galicia, de Mallorca, de Sevilla, de Cerdena, de Córdoba, de Corcega, de Murcia, de Jaen, de los Algarves, de Algeciras, de Gibraltar, de las Islas de Canaria, de las Yndias Orientales y Occidentales, Islas y Tierra Firme del Mar Oceano; Archiduque de Austria; Duque de Borgoña, de Brabante, y de Milan; Conde de

<sup>1</sup> Jenkinson, *ibid.*, iii. 350.

<sup>2</sup> *Ibid.*, iii. 352.



Abspurg, de Flandes, Tirol y Barcelona ; Señor de Viscaya, y de Molina, etc. Por quanto ajustados yà felizmente los principales artículos preliminares de paz entre mi Corona de España con la de Inglaterra igualmente que lo han sido los de otras potencias, llegará mui luego el caso de celebrarse un congreso general, en el parage que se juzgue mas á propósito y de común ventaja, para acabar de arreglar y consolidar definitivamente todos los puntos contravertidos entre las Potencias y Estados, que han tenido parte en la guerra que ahora se termina : Y considerando mui verosímil sea elejida esa misma Corte por su proporción, y por hallarse en ella los Plenipotenciarios que han intervenido en la conclusión de los citados preliminares, he juzgado indispensable y correspondiente autorizar de nuevo á persona de todo mi aprecio y confianza que se halle dotada de la instrucción, y experiencias para que en nombre mio asista á las conferencias, trate, arregle y ajuste quanto convenga á mis intereses en el futuro tratado definitivo ; Por tanto concurriendo en vos, Don Pedro Pablo Abarca de Bolea Ximenez de Urrea, etc., Conde de Aranda, y Castelflorido, Marques de Torres, de Villanant y Rupit, Visconde de Rueda y Yoch, Baron de las Baronias de Gavin, Sietamo, Clamosa y otras ; Señor de la Tenencia y Honor de Alcalaten, etc., Ricohombre de Naturaleza en Aragon, Grande de España de Primera Clase, Cavallero del insigne Orden del Toyson de Oro, y del de Sancti Spiritûs, mi Gentilhombre de Camara con Exercicio, Capitan General de mis Reales Exercitos, y mi Embaxador Extraordinario cerca del Rey Christianísimo, todos estos requisitos, y demas prendas que hacen al intento ; he venido en autorizaros, como por la presente os autorizo, os nombro, y os concedo mi pleno-poder en la forma mas ámplia y mas extensa, para que con los Ministros legitimamente autorizados por sus respectivos principes, ó estados á quienes representen, trateis, ajustéis, concluyais y firmeis todos los puntos, que se dirijan á la consolidación de la paz general, por medio del tratado definitivo, á que se aspira, prometiendo, en fé y palabra de Rey, de aprobar, ratificar, cumplir, y hacer cumplir integramente, cualesquiera artículos, pactos ó ajustes, que concluyais y firmeis. En fé de lo qual mandé expedir la presente firmada de mi mano, sellado con mi sello secreto, y refrendada por mi infrascrito consejero de estado y primer Secretario de Estado y del Despacho.

En el Pardo, á Ocho de Febrero, de mil Setecientos ochenta y três.

(L. S.)

Yo El Rey,  
(Countersigned) JOSEPH MONINO.<sup>1</sup>

<sup>1</sup> Jenkinson, iii. 387.



§ 134. There was signed at Paris, May 20, 1784, a Treaty of Peace between his Majesty the King of Great Britain and their High Mightinesses the States-General of the United Provinces of the Low Countries. The text was in French, the full-powers on both sides in Latin. The King's full-power is identically worded, *mutatis mutandis* with that used for the French treaty of 1783. The Dutch full-power is shorter, but contains the important clause, present in all the rest, in some shape or other, "Sincerâ mente et bonâ fide polliciti, nos grata, accepta et rata habituros omnia, quae dicti Domini Legatus noster<sup>1</sup> et Plenipotentiarius<sup>2</sup> stipulati fuerint, vel promiserint, concesserintve, nosque literas ratihibitionis solenni formâ daturus."<sup>3</sup>

§ 135. The full-powers given in 1806 to Lord Yarmouth in the first instance, and afterwards to Lord Lauderdale and Lord Yarmouth conjointly, are worded in the same manner as those of the Duke of Manchester in 1783. Napoleon's full-power to General Clarke on the same occasion is much shorter than the French full-power of 1783. It runs as follows—

Napoléon par la grâce de Dieu, et les constitutions, Empereur des Français, Roi d'Italie, prenant entière confiance dans la fidélité pour Notre personne, et le zèle pour Notre service de Monsieur le Général de division Clarke, Notre conseiller intime du cabinet, et grand officier de la Légion d'honneur, Nous lui avons donné, et lui donnons par les présentes, plein et absolu pouvoir, commission, et mandement spécial, pour en notre nom, et avec tel ministre de Sa Majesté Britannique dûment autorisé à cet effet, convenir, arrêter, conclure, et signer, tels traités, articles, conventions, déclarations, et autres actes qu'il avisera bien être ; promettons d'avoir pour agréable et tenir ferme et stable, accomplir et exécuter ponctuellement tout ce que le dit plénipotentiaire aura promis et signé en vertu des présents pleins-pouvoirs, comme aussi d'en faire expédier les lettres de ratification en bonne forme, et de les faire délivrer pour être échangées dans le tems dont il sera convenu.

<sup>1</sup> Mattheus Lestevenon van Berkenrode.

<sup>2</sup> Gerard Brantsen.

<sup>3</sup> Jenkinson, iii. 426. This full-power is countersigned by the Griffier, H. Fagel.

En foi de quoi Nous avons donné les présentes signées de notre main, contresignées et munies de Notre sceau Imperial.

A St. Cloud, le vingt un juillet an mil huit cent six, de Notre règne le second.

NAPOLÉON.

Par l'Empereur, le Ministre Secrétaire d'Etat,

HUGUES MARET.

Le Ministre des Relations Extérieures,

CH. MAU. TALLEYRAND.

Prince de Benevent.<sup>1</sup>

§136. *More modern examples of a Full-Power are the following—*

Belgian form of full-power.

Nous, Léopold, roi des Belges, désirant arrêter, de concert avec Sa Majesté . . . , un traité de commerce et de navigation également avantageux aux relations des deux Etats (*or*, une convention postale, . . . *or*, une convention additionnelle à la convention postale conclue entre la Belgique et le . . . le . . .). A ces causes et nous confiant entièrement en la capacité, le zèle et le dévouement du Sieur (le nom précédé du titre nobiliaire et du grade militaire, s'il y a lieu, et suivi de l'énumération des Ordres de chevalerie dont le plénipotentiaire est décoré, en plaçant en tête l'Ordre de Léopold, puis les divers Ordres étrangers, suivant l'ordre d'élévation des grades; à grade égal, on cite en premier lieu l'Ordre du souverain avec lequel on négocie; vient, en dernier lieu, la qualité diplomatique dont le plénipotentiaire est revêtu) nous l'avons nommé, commis et député et, par ces présentes, signées de notre main, le nommons, commençons et députons notre plénipotentiaire, à l'effet d'entrer en pourparlers avec celui ou ceux qui y auront été autorisés, de la part de Sa Majesté . . . pour négocier, établir, et conclure après l'échange de pleins-pouvoirs en bonne et due forme, une convention propre à atteindre le but proposé. Lui donnons plein et absolu pouvoir de négocier, arrêter et signer les dispositions de ladite convention, promettant en foi et parole de Roi, d'avoir pour agréable, de tenir ferme et stable à toujours, d'accomplir et d'exécuter ponctuellement tout ce que notre dit plénipotentiaire aura stipulé, promis et signé en vertu des présents pleins pouvoirs, sans jamais y contrevenir, ni permettre qu'il y soit contrevenu pour quelque cause et sous quelque prétexte que ce puisse être; comme aussi d'en faire expédier nos lettres

<sup>1</sup> *Papers Rel. to the Negot. with France*, p. 75.

de ratification en bonne forme et de les faire délivrer pour être échangées dans le temps dont il sera convenu. En foi de quoi, nous avons ordonné que les présentes fussent revêtues du sceau de l'Etat.

Donné à . . . le . . . jour du mois de . . . de l'an de grâce mil huit cent. . . .

(Signature royale.)

(Sceau de l'Etat)

Par le Roi

Le ministre des affaires étrangères.

(Signature du Ministre.)<sup>1</sup>

### § 137. *Spanish form of Full-Power (plenipotencia).*

#### DON ALFONSO XII

Por la Gracia de Dios, Rey Constitucional de España ,etc., etc., etc.

Por cuanto ha llegado el caso de celebrar entre España y . . . (el país ó países que sean) un Tratado de . . . (lo que sea), y siendo necesario que al efecto autorice Yo, debidamente á una persona que merezca Mi Real confianza, y concurriendo en Vos, Don . . . (nombre, apellido, títulos de nobleza, condecoraciones, cargos de la Corte y empleos del interesado, en letra redondilla gruesa) . . . las circunstancias que á este fin pueden apetecerse; por tanto, He venido en elegiros y nombraros, como por la presente os elijo y nombro para/que, revestido del carácter de Mi Plenipotenciario, conferenciéis y convengáis lo más acertado y oportuno con el Plenipotenciario que para el propio efecto nombre S. M. . . . (quien sea). Y todo lo que así conferenciéis, convengáis, tratéis, concluyáis y firméis, lo doy desde ahora por grato y rato, lo observaré y cumpliré, lo haré observar y cumplir como si por Mi Mismo lo hubiere conferenciado, convenido, tratado, concluido y firmado para lo cual os doy Mi pleno poder en la más ámplia forma que de derecho se requiere. Y en fe de ello, He hecho expedir la presente, firmada de M. mano, debidamente sellada y refrendada del infrascrito Mi Ministro de Estado. Dada

(Firmado)

ALFONSO.

(L. S.) (Refrendado)

El Ministro de Estado.

En Palacio de Madrid à . . . de . . . de.<sup>2</sup>

In this formula there is no undertaking for ratification, but in a French form, which appears to be also in use at Madrid, the usual words are inserted.

<sup>1</sup> García de la Vega, p. 255.

<sup>2</sup> De Castro y Casaleiz, i. 403.

§ 138. *The most recent model of English general Full-power.*

(Signature) GEORGE R.I.

George, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India, etc., etc., etc.

To all and singular to whom these Presents shall come, Greeting !

Whereas, for the better treating of and arranging any matters which are now in discussion, or which may come into discussion, between Us and

We have judged it expedient to invest a fit person with Full Power to conduct negotiations on Our part ; know ye, therefore, that We, reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence, and Circumspection of Our

have named, made, constituted and appointed, as We do by these Presents name, make, constitute and appoint him Our undoubted Commissioner, Procurator, and Plenipotentiary ; Giving to him all manner of Power and Authority to treat, adjust and conclude with such Minister and Ministers as may be vested with similar Power and Authority on the part of

any Treat , Convention or Agreement between Us and , and to sign for Us, and in Our name, everything so agreed upon and concluded, and to do and transact all such other matters as may appertain thereto, in as ample a manner and form, and with equal force and efficacy, as We Ourselves could do, if personally present : Engaging and Promising, upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said Commissioner, Procurator, and Plenipotentiary, shall, subject if necessary to Our Ratification, be agreed to, acknowledged and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

In witness whereof, We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the                      day  
of                      in the Year of Our  
Lord, One Thousand, Nine hundred and  
and in the                      Year of Our Reign.

The wording of a special full-power differs from this very slightly.

It will be noticed that Great Britain is the principal, perhaps the only, state, where a full-power is not countersigned.

## CHAPTER IX

### COUNSELS TO DIPLOMATISTS

§ 139. Callières on necessary qualities for a diplomatist—§ 140. Lord Malmesbury's advice to a young man destined for the profession—§ 141. Callières on the style of despatches—§ 142. On Gallicisms and other vulgar expressions—§ 143. Use of bribery—Schmelzing and Schmalz on—§ 144. Callières' story of D. Estevan de Gamarra—§ 145. Callières on seeing things from the point of view of the other party—§ 146. Garden on unvarnished official reports—§ 147. Duties of a diplomatist to his resident countrymen—§ 148. Passports and fees—§ 149. On training the juniors—§ 150. Should not have local pecuniary interests—§ 151. Reports of official conversations should be verified before they are despatched—§ 152. Should not publish writings on international politics—§ 153. Use of foreign languages—§ 154. Reserve in communicating official papers—§ 155. Palmerston and Jarnac—§ 156. Palmertson and the *coup d'état* of 1851—§ 157. Caraman, indiscretions at Vienna—§ 158. Secret diplomacy—§ 159. Minister for foreign affairs should have personal knowledge of his agents—§ 160. Diplomatist must protect the dignity of his country—§ 161. Difficulty of withdrawal from a wrong course publicly announced—§ 162. False economy in telegrams—§ 163. Carefulness about conversation at table—§ 164. Do not hurry signature of treaties—§ 165. Do not rashly say "*jamais*"—§ 166. Your post is not always the centre of policy—§ 167. Telegrams leave no time for reflection.

§ 139. CALLIÈRES on the qualities necessary for the profession of a diplomatist :—

Ces qualités sont un esprit attentif et appliqué, qui ne se laisse point distraire par les plaisirs, & par les amusemens frivoles, un sens droit qui conçoive nettement les choses comme elles sont, & qui aille au but par les voyes les plus courtes & les plus naturelles, sans s'égarer à force de raffinement & de vaines subtilitez qui rebuttent d'ordinaire ceux avec qui on traite, de la penetration pour découvrir ce qui se passe dans le cœur des hommes & pour sçavoir profiter des moindres mouvemens de leurs visages & des autres effets de leurs passions, qui échappent aux plus dissimulez ; un esprit fecond en expediens,



pour aplanir les difficultez qui se rencontrent à ajuster les intérêts dont on est chargé ; de la presence d'esprit pour répondre bien à propos sur les choses impreuvées, & pour se tirer par des réponses judicieuses d'un pas glissant ; une humeur égale, & un naturel tranquille & patient, toujours disposé à écouter sans distraction ceux avec qui il traite ; un abord toujours ouvert, doux, civil, agreable, des manieres aisées & insinuanes qui contribuent beaucoup à acquérir les inclinations de ceux avec qui on traite, au lieu qu'un air grave & froid, & une mine sombre & rude, rebute & cause d'ordinaire de l'aversion.

Il faut surtout qu'un bon Negociateur<sup>1</sup> ait assez de pouvoir sur lui-même pour resister à la démangeaison de parler avant que de s'être bien consulté sur ce qu'il a à dire, qu'il ne se pique pas de répondre sur le champ & sans prémeditation sur les propositions qu'on lui fait, & qu'il prenne garde de tomber dans le deffaut d'un fameux Ambassadeur étranger de nôtre tems, qui étoit si vif dans la dispute, que lorsqu'on l'échauffoit en le contredisant, il reveloit souvent des secrets d'importance pour soutenir son opinion.

Il ne faut pas aussi qu'il donne dans le deffaut opposé de certains esprits mystérieux, qui font des secrets de rien, & qui érigent en affaires d'importance de pures bagatelles ; c'est une marque de petitesse d'esprit de ne sçavoir pas discerner les choses de consequence d'avec celles qui ne le sont pas, & c'est s'ôter les moyens de découvrir ce qui se passe, & d'acquérir aucune part à la confiance de ceux avec qui on est en commerce, lorsqu'on a avec eux une continuelle reserve.

Un habile Negociateur ne laisse pas penetrer son secret avant le temps propre ; mais il faut qu'il sçache cacher cette retenüe à ceux avec qui il traite ; qu'il leur temoigne de l'ouverture & de la confiance, & qu'il leur en donne des marques effectives dans les choses qui ne sont point contraires à ses desseins ; ce qui les engage insensiblement à y répondre par d'autres marques de confiance en des choses souvent plus importantes ; il y a entre les Negociateurs un commerce d'avis réciproques, il faut en donner, si on veut en recevoir, & le plus habile est celui qui tire le plus d'utilité de ce commerce, parce qu'il a des vûes plus étendûes, pour profiter des conjonctures qui se presentent.<sup>2</sup>

Il ne suffit pas pour former un bon Negociateur, qu'il ait toutes les lumieres, toute la dexterité & les autres belles

<sup>1</sup> Observe that the word *diplomate* did not exist when Callières wrote.

<sup>2</sup> *De la manière de négocier avec les souverains*. Paris, 1716, 29. Orthography and accentuation of the original.

qualitez de l'esprit ; il faut qu'il ait celles qui dépendent des sentimens du cœur ; il n'y a point d'employ qui demande plus d'élevation & plus de noblesse dans les manieres d'agir.<sup>1</sup>

Tout homme qui entre dans ces sortes d'employs avec un esprit d'avarice, & un desir d'y chercher d'autres interêts que ceux qui sont attachez à la gloire de réüssir & de s'attirer par là l'estime & les récompenses de son Maître, n'y sera jamais qu'un homme très-médiocre.<sup>2</sup>

Pour soutenir la dignité attachée à ces employs, il faut que celui qui en est revêtu, soit liberal & magnifique, mais avec choix & avec dessein, que sa magnificence paroisse dans son train, dans sa livrée & dans le reste de son equipage ; que la propreté, l'abondance, & même la délicatesse, regne sur sa table : qu'il donne souvent des fêtes et des divertissemens aux principales personnes de la Cour où il se trouve, & au Prince même, s'il est d'humeur à y prendre part, qu'il tâche d'entrer dans ses parties de divertissemens, mais d'une maniere agreable & sans le contraindre, & qu'il y apporte toujours un air ouvert, complaisant, honnête et un desir continuel de lui plaire.<sup>3</sup>

S'il est dans un Etat populaire, il faut qu'il assiste à toutes ses Diettes ou Assemblées. qu'il y tienne grande table pour y attirer les Députez, et qu'il s'y acquiere par ses honnestetez & par ses presens, les plus accreditez & les plus capables de détourner les résolutions préjudiciables aux interêts de son Maître, & de favoriser ses desseins.

Une bonne table facilite les moyens de scavoir ce qui se passe, lorsque les gens du pays ont la liberté d'aller manger chez l'Ambassadeur, & la dépense qu'il y fait est non seulement honorable, mais encore très-utile à son Maître lorsque le Négociateur la sçait bien mettre en œuvre. C'est le propre de la bonne chere de concilier les esprits, de faire naître de la familiarité et de l'ouverture de cœur entre les convives, & la chaleur du vin fait souvent découvrir des secrets importants.<sup>4</sup>

Il ne doit pas negliger de se rendre les Dames favorable en s'attachant à leur plaire & à se rendre digne de leur estime, le pouvoir de leurs charmes s'étend souvent jusqu'à contribuer aux resolutions les plus importantes d'où dependent les plus grands événemens ; mais en réüssissant à leur plaire par sa magnificence, par sa politesse & même par sa galanterie qu'il n'engage pas son cœur.<sup>5</sup>

Comme la voye la plus sûre de s'acquérir les inclinations du Prince auprès duquel on se trouve, est de gagner celles des

<sup>1</sup> *De la manière de négocier avec les souverains*, 35.

<sup>2</sup> *Ibid.*, 37.

<sup>3</sup> *Ibid.*, 38.

<sup>4</sup> *Ibid.*, 156.

<sup>5</sup> *Ibid.*, 39.

personnes qui ont credit sur son esprit, il faut qu'un bon Negociateur joigne à des manieres civiles, honnestes & complaisantes, certaines dépenses qui contribuent beaucoup à lui en ouvrir le chemin ; mais il faut qu'elles soient faites avec adresse, & que les personnes à qui on veut faire des presens, les puissent recevoir avec bienveillance & avec sûreté.<sup>1</sup>

Il faut encore qu'un habile Negociateur ne neglige pas de s'acquérir par des gratifications & des pensions secretes certain gens qui ont plus d'esprit que de fortune, qui ont l'art de s'insinuer dans toutes les Cours, & desquels il peut tirer de grandes utilitez quand il sçait les bien choisir. On a vû des Musiciens & des chanteuses qui par les entrées qu'ils avoient chez certains Princes & chez leurs Ministres, ont decouvert de très-grands desseins. Ces mêmes souverains, ont de petits Officiers necessaires ausquels ils sont souvent obligez de se confier, qui ne sont pas toujours à l'épreuve d'un present fait bien à propos, & on trouve même de leurs principaux Ministres assez complaisants pour ne les pas refuser quand on sçait les leur offrir de bonne grace.<sup>2</sup>

On appelle un Ambassadeur un honorable Espion ; parce que l'une des ses principales occupations est de decouvrir les secrets des Cours où il se trouve, & il s'acquitte mal de son employ s'il ne sçait pas faire les dépenses necessaires pour gagner ceux qui sont propres à l'en instruire.<sup>3</sup>

La fermeté est encore qualité très-necessaire à un Negociateur . . . un homme né timide n'est pas capable de bien conduire de grands desseins ; il se laisse ébranler facilement dans les accidens imprévûs, la peur peut faire decouvrir son secret par les impressions qu'elle fait sur son visage, & par le trouble qu'elle cause dans ses discours ; elle peut même lui faire prendre des mesures préjudiciables aux affaires dont il est chargé, & lorsque l'honneur de son Maître est attaqué, elle l'empêche de le soutenir avec la vigueur & la fermeté si necessaires en ces occasions, & de repousser l'injure qu'on luy fait, avec cette noble fierté & cette audace qui accompagnent un homme de courage. . . . Mais l'irresolution est très-prejudiciable dans la conduite des grandes affaires ; il y faut un esprit décisif, qui après avoit balancé les divers inconveniens, sçache prendre son parti & le suivre avec fermeté.<sup>4</sup>

Un bon Negociateur ne doit jamais fonder le succès de ses negociations sur de fausses promesses & sur des manquemens de foy ; c'est une erreur de croire, suivant l'opinion vulgaire, qu'il faut qu'un habile Ministre soit un grand maître en l'art

<sup>1</sup> *De la manière de négocier avec les souverains*, 41.

<sup>2</sup> *Ibid.*, 43.

<sup>3</sup> *Ibid.*, 46.

<sup>4</sup> *Ibid.*, 48.

de fourber ; la fourberie est un effet de la petitesse de l'esprit de celui qui le met en usage & c'est une marque qu'il n'a pas assez d'étenduë pour trouver les moyens de parvenir à ses fins, par les voyes justes & raisonnables.<sup>1</sup>

Un trop grand attachement au jeu, à la débauche & aux amusemens frivoles, est peu compatible avec l'attention nécessaire aux affaires, & il est difficile que ceux qui se laissent entraîner par cette inclination, puissent remplir tous les devoirs de leurs emplois, & qu'ils ne laissent même quelquefois tenter leur fidélité, pour pouvoir satisfaire à leurs desirs déreglez, qui augmentent nécessairement leurs besoins.<sup>2</sup>

Un homme qui se possède & qui est toujours de sang froid a un grand avantage à traiter avec un homme vif & plein de feu ; & on peut dire qu'ils ne combattent pas avec armes égales. Pour rëussir en ces sortes d'employs, il y faut beaucoup moins parler qu'écouter ; il faut du flegme de la retenuë, beaucoup de discretion & une patience à toute épreuve.<sup>3</sup>

On a remarqué qu'ordinairement un Negociateur Espagnol, n'est pas pressé, qu'il ne songe pas à finir pour finir, mais à finir avec avantage, & à profiter de toutes les conjonctures favorables qui se presentent, & sur tout de nôtre impatience.<sup>4</sup>

Il doit pour en être bien instruit, lire avec application tous les traitez publics, tant generaux que particuliers qui ont été faits entre les Princes & les Etats de l'Europe . . . il est bon qu'il s'instruise de tous les traitez faits depuis le temps [du roi *Loüis XI* & *Charles* dernier Duc de Bourgogne dont la maison d'Autriche a herité], mais plus particulièrement de ceux qui ont été conclus entre les principales puissances de l'Europe, à commencer par les traitez de Westphalie jusqu'au temps present.<sup>5</sup>

[He recommends particularly the study of the letters of Cardinal d'Ossat, those of Mazarin to the French plenipotentiaries at Münster, his despatches to the King reporting on his conferences with Don Luis de Haro at the Peace of the Pyrenees, those of the embassies of Noailles, Bishop of Aix and Montluc, Bishop of Valence, those of the President Jeannin, the *Mercures Italiens* of Vittoria Siri and his *Memorié Recondité*, full of very

<sup>1</sup> *Ibid.*, 54.

<sup>2</sup> *De la manière de négocier avec les souverains*, 61.

<sup>3</sup> *Ibid.*, 66.

<sup>4</sup> *Ibid.*, 67.

<sup>5</sup> *Ibid.*, 79.

curious and useful facts, and the instructions given to French Ambassadors.<sup>1]</sup>

Le Duc de Rohan, un grand homme a dit . . . que les Princes commandent aux peuples, et que l'intérêt commande aux Princes. Mais on peut y ajouter que les passions des Princes & de leurs Ministres commandent souvent à leurs intérêts.<sup>2</sup>

Chaque sujet qui se destine à être employé dans les negociations pour le service du Roy, devroit sçavoir les langues Allemande, Italienne & Espagnolle, avec la latine, qu'il seroit honteux d'ignorer à un homme engagé dans les emplois publics, cette langue étant la langue commune de toutes les Nations Chrétiennes.<sup>3</sup>

Un homme engagé dans les emplois publics, doit considerer qu'il est destiné pour agir & non pas pour demeurer trop longtemps enfermé dans son cabinet, que sa principale étude doit être de s'instruire de ce qui se passe parmi les vivans, préferablement à tout ce qui s'est passé chez les morts.<sup>4</sup>

Un sage & habile Negociateur doit non seulement être bon Chrétien ; mais paroître toujours tel dans ses discours & dans sa maniere de vivre, & ne point souffrir dans sa maison de gens libertins & de mœurs déreglez, ny qu'on tienne des discours licencieux & de mauvais exemple à sa table & en sa presence.

Il doit être juste & modeste dans toutes ses actions, respectueux avec les Princes, complaisant avec ses égaux, carressant avec ses inférieurs, doux, civil & honneste avec tout le monde.<sup>5</sup>

Il faut qu'il s'accommode aux mœurs & aux Coûtumes du Pays où il se trouve, sans y témoigner de la repugnance & sans les mépriser, comme font plusieurs Negociateurs qui loïent sans cesse les manieres de vivre de leurs pays pour trouver à redire à celles des autres.

Un Negociateur doit se persuader une fois pour toutes qu'il n'est pas assez autorisé pour réduire tout un pays à sa façon de vivre, & qu'il est bien plus raisonnable qu'il s'accommode à celle du Pays où il est pour le peu de temps qu'il y doit rester.

Il ne doit jamais blâmer la forme du gouvernement & moins encore la conduite du Prince avec qui il negocie, il faut au contraire qu'il loïe tout ce qu'il y trouve de loüable sans

<sup>1</sup> *Ibid.*, 81. A great number have now been published under the title of "Recueil des instructions, etc., depuis les traités de Westphalie jusqu'à la Révolution."

<sup>2</sup> *De la manière de négocier avec les souverains*, 92.

<sup>3</sup> *Ibid.*, 98.

<sup>4</sup> *Ibid.*, 100.

<sup>5</sup> *Ibid.*, 269.



affectation et sans basse flatterie. Il n'y a point de Nations & d'Etats qui n'ayent plusieurs bonnes loix parmy quelques mauvaises, il doit louer les bonnes & ne point parler de celles qui ne le sont pas.

Il est bon qu'il sache ou qu'il étudie l'histoire du Pays où il se trouve, afin qu'il ait occasion d'entretenir le Prince ou les principaux de sa Cour des grandes actions de leurs Ancêtres & de celles qu'ils ont faites eux-mêmes ce qui lui est fort capable de lui acquérir leur inclination, qu'il les mette souvent sur ces matières, & qu'il se les fasse raconter par eux, parce qu'il est sûr qu'il leur fera plaisir de les écouter, et qu'il doit rechercher à leur en faire.<sup>1</sup>

Un Negociateur doit toujours faire des relations avantageuses, des affaires de son Maître dans le pays où il se trouve, mais avec discretion & en se conservant de la creance pour les avis qu'il donne ; il faut pour cela qu'il évite de débiter des mensonges, comme font souvent certains Ministres de nos voisins qui ne font aucun scrupule de publier des avantages imaginaires en faveur de ceux de leur party. Outre que le mensonge est indigne d'un Ministre public, il fait plus de tort que de profit aux affaires de son Maître, parce qu'on n'ajoute plus de foy aux avis qui viennent de sa part ; il est vray qu'il est difficile de ne pas recevoir quelquefois de faux avis, mais il faut les donner tels qu'on les a reçûs, sans s'en rendre garand ; & un habile Negociateur doit établir si bien la reputation de sa bonne-foy dans l'esprit du Prince & des Ministres avec qui il negocie, qu'ils ne doutent point de la verité de ses avis lorsqu'il les leur a donnez pour sûrs non plus que de la verité de ses promesses.<sup>2</sup>

Un Ambassadeur doit éviter de recevoir au nombre de ses principaux domestiques des gens du Pays où il se trouve, ce sont d'ordinaire des espions qu'il introduit dans sa maison.<sup>3</sup>

Ils doivent aussi prendre garde de prostituer leur dignité, comme font ceux qui vont dans des cabarets & autres lieux malhonnêtes & mal séans, & qui ont pour amis & pour confidens des hommes notez par leurs vices & par leurs débauches.<sup>4</sup>

Quelques élevez que soient les Princes, ils sont hommes comme nous, c'est-à-dire sujets aux mêmes passions, mais outre celles qui leur sont communes avec les autres hommes, l'opinion qu'ils ont de leur grandeur, & le pouvoir effectif qui est attaché à leur rang leur donnent des idées différentes de celles du commun des hommes, & il faut qu'un bon Negocia-

<sup>1</sup> *De la manière de négocier avec les souverains*, 270.

<sup>2</sup> *Ibid.*, 279.

<sup>3</sup> *Ibid.*, 283.

<sup>4</sup> *Ibid.*, 286.



teur agisse avec eux par rapport à leurs idées, s'il veut ne pas se tromper.<sup>1</sup>

Il est plus avantageux à un habile Negociateur de negocier de vive voix, parce qu'il a plus d'occasions de découvrir par ce moyen les sentimens & les desseins de ceux avec qui il traite, & d'employer sa dextérité à leur en inspirer de conformes à ses vûes par ses insinuations & par la force de ses raisons.<sup>2</sup>

[Generally speaking, it may be said that written Notes should be employed, in the first place for all matters of routine, secondly, to place on record an agreement arrived at verbally, and thirdly, to state the views of one's government when all prospect of agreement has disappeared. On the other hand, it is often useful to be provided with a rough sketch of the terms of a proposed agreement between the parties, since that helps to define the conditions on which agreement may be arrived at.]

La plûpart des hommes qui parlent d'affaires ont plus d'attention à ce qu'ils veulent dire qu'à ce qu'on leur dit, ils sont si pleins de leurs idées qu'ils ne songent qu'à se faire écouter, & ne peuvent presque obtenir sur eux-mêmes d'écouter à leur tour. . . .<sup>3</sup> L'une des qualitez la plus necessaire à un bon Negociateur est de sçavoir écouter avec attention & avec réflexion tout ce qu'on luy veut dire, & de répondre juste & bien à propos aux choses qu'on luy represente, bien-loin de s'empresser à declarer tout ce qu'il sçait & tout ce qu'il desire. Il n'expose d'abord le sujet de sa negociation que jusqu'au point qu'il faut pour sonder le terrain, il regle ses discours & sa conduite sur ce qu'il découvre tant par les réponses qu'on lui fait, que par les mouvemens du visage, par le ton & l'air dont on lui parle ; & par toutes les autres circonstances qui peuvent contribuer à luy faire penetrer les pensées & les desseins de ceux avec qui il traite, & après avoir connu la situation & la portée de leurs esprits, l'état de leurs affaires, leurs passions & leurs interests, il se sert de toutes ses connoissances pour les conduire par degré au but qu'il s'est proposé.

C'est un des plus grands secrets de l'art de negocier que de sçavoir, pour ainsi dire, distiler goûte à goûte dans l'esprit

<sup>1</sup> *Ibid.*, 229.

<sup>2</sup> *Ibid.*, 250.

<sup>3</sup> *De la manière de négocier avec les souverains*, 250.

de ceux avec qui on negocie les choses qu'on a interest de leur persuader. . . .

Comme les affaires sont ordinairement épineuses par les difficultez qu'il y a d'ajuster des interests souvent opposez entre des Princes & des Etats qui ne reconnoissent point de Juges de leurs pretentions, il faut que celui qui en est chargé employe son adresse à diminuer & à aplanir ces difficultez, non seulement par les expediens que ses lumieres luy doivent suggerer, mais encore par un esprit liant & souple qui sçache se plier & s'accommoder aux passions & même aux caprices & aux préventions de ceux avec qui il traite. Un homme difficultueux & d'un esprit dur & contrariant augmente les difficultez attachées aux affaires par la rudesse de son humeur, qui aigrit & aliene les esprits, & il érige souvent en affaires d'importance des bagatelles & des prétentions mal fondées, dont il se fait des especes d'entraves qui l'arrêtent à tous momens dans le cours de sa negociation.<sup>1</sup>

Il ne se trouve presque point d'hommes qui veüillent avoüer qu'ils ont tort, ou qu'ils se trompent, & qui se dépouillent entierement de leurs sentimens en faveur de ceux d'autrui, quand on ne fait que les contredire par des raisons opposées quelques bonnes qu'elles puissent être, mais il y en a plusieurs qui sont capables de se relâcher de quelques-unes de leurs opinions, quand on leur en accorde d'autres, ce qui se fait moyennant certains menagemens propres à les faire revenir de leurs préventions ; il faut pour cela avoir l'art de leur alleguer des raisons capables de justifier ce qu'ils ont fait ou ce qu'ils ont crû par le passé, afin de flater leur amour propre, & leur faire connoître ensuite des raisons plus fortes appuyées sur leurs interêts, pour les faire changer de sentiment et de conduite . . . il faut éviter les contestations aigres & obstinées avec les Princes & avec leurs Ministres & leur représenter la raison sans trop de chaleur, & sans vouloir avoir toujours le dernier mot.<sup>2</sup>

These observations, though made two centuries ago, have lost nothing of their value by the lapse of time. National character and human nature have not changed to any appreciable extent. Callières' counsels are not here reproduced for the use of experienced old diplomats, but as hints that may be valuable to younger members of the profession, for whose benefit is also given the following letter of advice by Lord Malmesbury.

<sup>1</sup> *De la manière de négocier avec les souverains*, 251-4.

<sup>2</sup> *Ibid.*, 257.

§ 140. Letter of the first Earl of Malmesbury to Lord Camden, written at his request, on his nephew, Mr. James, being destined for the foreign line :—

Park Place, April 11, 1813.

MY DEAR LORD,—It is not an easy matter in times like these, to write anything on the subject of a Foreign Minister's conduct that might not be rendered inapplicable to the purpose by daily events. Mr. James' best school will be the advantage he will derive from the abilities of his Principal, and from his own observations.

The first and best advice I can give a young man on entering this career, is to *listen*, not to *talk*—at least, not more than is necessary to induce others to talk. I have in the course of my life, by endeavouring to follow this method, drawn from my opponents much information, and concealed from them my own views, much more than by the employment of spies or money.

To be very cautious in *any* country, or at *any* court, of such as, on your first arrival, appear the most eager to make your acquaintance and communicate their ideas to you. I have ever found their professions insincere, and their intelligence false. They have been the first I have wished to shake off, whenever I have been so imprudent as to give them credit for sincerity. They are either persons who are not considered or respected in their own country, or are put about you to entrap and circumvent you as newly arrived.

Englishmen should be most particularly on their guard against such men, for we have none such on our side the water, and are ourselves so little *coming* towards foreigners, that we are astonished and gratified when we find a different treatment from that which strangers experience here ; but our reserve and *ill manners* are infinitely less dangerous to the stranger than these premature and hollow civilities.

To avoid what is termed abroad an *attachement*. If the other party concerned should happen to be sincere, it absorbs too much time, occupies too much your thoughts ; if insincere, it leaves you at the mercy of a profligate and probably interested character.

Never to attempt to export English habits and manners, but to conform as far as possible to those of the country where you reside—to do this even in the most trivial things—to learn to speak their language, and never to sneer at what may strike you as singular and absurd. Nothing goes to conciliate so much, or to amalgamate you more cordially

with its inhabitants, as this very easy sacrifice of *your* national prejudices to *theirs*.

To keep your cypher and all your official papers under a very secure lock and key; but not to *boast* of your precautions, as Mr. Drake did to Mehée de la Touche.

Not to allow any opponent to carry away any official document, under the pretext that he wishes "to study it more carefully"; let him read it as often as he wishes, and, if it is necessary, allow him to take minutes of it, but *both in your presence*.

Not to be carried away by any real or supposed distinctions from the sovereign at whose Court you reside, or to imagine, because he may say a few more commonplace sentences to you than to your colleagues, that he entertains a special personal predilection for you, or is more disposed to favour the views and interests of your Court than if he did not notice you at all. This is a species of royal stage-trick, often practised, and for which it is right to be prepared.

Whenever you receive *discretionary* instructions (that is, when authority is given you) in order to obtain any very desirable end, to decrease your demands or increase your concessions according as you find the temper and disposition of the Court where you are employed, and to be extremely careful not to let it be supposed that you have any such authority; to make a firm, resolute stand on the first offer you are instructed to make, and, if you find "*this nail will not drive,*" to bring forward your others *most gradually*, and not, either from an apprehension of not succeeding at all, or from an over-eagerness to succeed too rapidly, injure essentially the interests of your Court.

It is scarcely necessary to say that on occasion, no provocation, no anxiety to rebut an unjust accusation, no idea, however tempting, of promoting the object you have in view, can *need*, much less justify, a *falsehood*. Success obtained by one is a precarious and baseless success. Detection would ruin, not only your own reputation for ever, but deeply wound the honour of your Court. If, as frequently happens, an indiscreet question, which seems to require a distinct answer, is put to you abruptly by an artful minister, parry it either by treating it as an indiscreet question, or get rid of it by a grave and serious look: but on no account contradict the assertion flatly if it be true, or admit it as true, if false and of a dangerous tendency.

In ministerial conferences, to exert every effort of *memory* to carry away faithfully and correctly what *you hear* (what

*you say* in them yourself you will not forget) ; and, in drawing your report, to be most careful it should be faithful and correct. I dwell the more on this (seemingly a useless hint) because it is a most seducing temptation, and one to which we often give way almost unconsciously, in order to give a better turn to a phrase, or to enhance our skill in negotiation ; but we must remember we mislead and deceive our Government by it.

I am, etc.<sup>1</sup>

§ 141. *Despatches, their style :—*

“ Il faut que le stile des dépêches soit net & concis, sans y employer de paroles inutiles & sans y rien obmettre de ce qui sert à la clarté du discours, qu’il regne une noble simplicité, aussi éloignée d’une vaine affectation de science & de bel esprit, que de negligence & de grossiereté, & qu’elles soient également épurées de certaines façons de parler nouvelles & affectées, & de celles qui sont basses & hors du bel usage.”<sup>2</sup> Il y a peu de choses qui puissent demeurer secretes parmi les hommes qui ont un long commerce ensemble, des lettres interceptées & plusieurs autres accidens imprevis les découvrent souvent, & on en pourrait citer ici divers exemples ; ainsi il est de la sagesse d’un bon Negociateur de songer lorsqu’il écrit que ses dépêches peuvent être vûes du Prince ou des Ministres dont il parle, & qu’il doit les faire de telle sorte qu’ils n’ayent pas de sujet legitime de s’en plaindre.”<sup>3</sup>

§ 142. An English writer of despatches should be careful to eschew Gallicisms or idioms borrowed from the language of the country where he is serving. Such phrases as “ it goes without saying ” (for “ of course ”), “ the game is not worth the candle ” (for “ it is not worth while ”), “ in this connexion,” “ that gives furiously to think ” (for “ that is a serious subject for reflection ”), and others adopted from the current style of journalism, are to be avoided. “ Transaction ” for “ compromise ” ; “ franchise of duties ” for “ freedom from [customs] duties,” “ category,” for “ class,” “ suscitate ” for “ raise ” ; “ destitution ” for “ dismissal ” ; “ rally themselves to ” for “ come round to ”

<sup>1</sup> *Diaries and Correspondence*, iv. 420.

<sup>2</sup> Callières, 298.

<sup>3</sup> *Ibid.*, 304.



and "minimal" for "very small" are also cases in point. "Psychological moment" is a mistranslation of "das psychologische Moment" which properly means "the psychological factor." Never place an adjective before a noun, if it can be spared; it only weakens the effect of a plain statement. Above all, do not attempt to be witty. Each despatch must treat of one subject only. It is a good practice to number the paragraphs. To keep a diary of events and of conversations is very useful.

### § 143. *The use of Bribery.*

The books generally condemn the employment of bribes to obtain secret information or to influence the course of negotiation. Nevertheless there are many cases recorded in history of such proceedings being practised on a large scale, and with considerable effect. Besides gifts, the furnishing of articles to the press, or information which editors would not be able to secure otherwise, has been found of great utility for influencing public opinion. "L'ambassadeur [Count Lieven] reçut enfin l'ordre d'exercer, par l'entremise de la presse périodique, une pression sur l'opinion publique et de démontrer au peuple anglais que son intérêt le plus naturel exigeait l'alliance et l'amitié de la Russie pour le meilleur développement de son commerce et de son industrie."<sup>1</sup> This was a century or more since, but instances of quite recent date could easily be quoted.

"If an envoy seek by means of presents to secure the goodwill or friendship of those who can assist him in attaining his objects, but without either expressly or tacitly asking from them anything wrong, this is not to be regarded as bribery (v. Martens, *Europ., V. R.*, p. 271, § 229). Ministers, envoys and other diplomatic agents receive decorations and various other gifts, not only from their own, but also from foreign sovereigns, in recognition of their services, or as other means of distinction. Almost innumerable instances can be cited from earlier and from more recent periods. Gifts of money

<sup>1</sup> F. de Martens, *Recueil*, etc., xi. 212.



are very usual even now (1819) at many Courts. The duc de Richelieu . . . received at the end of the Congress of Aix-la-Chapelle the richest gifts in the way of snuffboxes, especially from England and Prussia. The rest of the diplomatic *personnel* present there was also remembered, and amongst them the Herr v. Gentz, protocollist of the Congress, most bountifully.”<sup>1</sup>

“It must be left to the ingenuity of the envoy to form connections which will enable him to obtain news and to verify what he receives. The Law of Nations appears to hold that it is not forbidden to obtain information by means of bribery; at least no one doubts the daily practice of this expedient, and though it has often been censured, in other cases it has been not obscurely admitted. The majority of diplomatists heartily enjoy it as a proof of their cunning. I hold, nevertheless, that nothing is good politics but what is honourable, and that diplomatic bribery, however celebrated it may be, is not of greater utility than secret police, which costs a great deal and is valueless, because the terror it spreads affords to a tyrant less advantage than the damage arising from the hatred which it excites against him. How can traitors be trusted? And are the cases rare in which injury has been received from pretended traitors? An uniform policy, armed with strength and honesty, has little to apprehend from what is concealed, in either foreign or domestic affairs, and steady attention to what passes around us will mostly enable us to divine what is secret.”<sup>2</sup>

In another place the same writer says—

“The Law of Nations condemns bribery in negotiations so decidedly that Powers accused of it have always denied the fact, not one has ever confessed or defended it as permissible. The surest test for distinguishing what is honourable and legitimate, from what is disgraceful and illegitimate, is the possibility, or the opposite, of avowing an act without losing the respect of the world. Bribery may be permissible as a weapon of defence; as a means of attack it is disallowed, but in our Law of Nations no law of war forbids our buying off the enemy’s *fondé de pouvoirs* (Gewalthaber). Attack is any kind of pressure exercised to make us give up our rights. On the other hand it is a wrong when we try to buy the *fondé de pouvoirs* of him who exercises pressure upon us, in order to induce him to be disloyal equally to his sovereign and to justice.”<sup>3</sup>

<sup>1</sup> Schmelzing, *Systematisches Grundriss*, ii. 208.

<sup>2</sup> Schmalz, *Europ.*, V. R., 98.

<sup>3</sup> *Ibid.*, 108.

It seems to us that the Law of Nations is not concerned with bribery. It is a question of morality alone. Since every Government provides itself with a secret service fund, it is evident that the practice of purchasing secret information is more or less universal.

§ 144. Callières relates a pleasing story of a Spanish diplomatist who lost his chances of promotion by being too outspoken in reports to his Government.

" *Dom Estevan de Gamarre* avoit servi le Roy d'Espagne un grand nombre d'années avec zele & avec fidelité tant à la guerre que dans les negotiations, particulièrement en Hollande, où il a été longtemps Ambassadeur ; il avoit un parent dans le Conseil d'Espagne disposé à y faire valoir ses services, & cependant il n'en recevoit aucune récompense, pendant que de nouveaux venus s'avançoient dans les plus grands emplois. Il se resolut d'aller à Madrid pour découvrir le sujet de sa mauvaise fortune, il en fit ses plaintes au Ministre son parent, en luy déduisant ses longs & importans services oubliez ; ce Ministre après l'avoir paisiblement écouté, luy répondit qu'il ne devoit se prendre qu'à lui-même de sa disgrâce, que s'il eût été aussi bon Courtisan que bon Negociateur & fidele sujet, il se seroit avancé comme les autres qui n'avoient pas si bien servi, mais que sa sincerité s'étoit opposée à sa fortune, que toutes ses dépêches n'étoient pleines que de veritez fâcheuses au Roy son Maître et à ses Ministres, que lorsque les François avoient remporté quelque victoire, il en faisoit de fideles relations par ses lettres, que quand ils assiegeoient une place, il étoit le premier à le mander ; & en predisoit la prise si on ne donnoit ordre de la secourir, que quand un allié étoit mécontent & dégoûté de ce que la Cour d'Espagne manquoit aux paroles qu'elle luy avoit données, il la sollicitoit avec importunité de tenir ses promesses, & l'avertissoit que cet Allié étoit prêt de la quitter si on ne le satisfaisoit. Que les autres Negociateurs Espagnols mieux instruits de leurs propres intérêts & des moïens de faire fortune, mandoient que les François étoient des *Gavaches*, que leurs armées étoient ruinées & hors d'état de rien entreprendre, que lorsque les troupes Françaises avoient remporté quelques avantages, ils assûroient qu'elles avoient été bien battues & que leurs ennemis se dispoient à entrer en France, à quoi ce Ministre ajoûta que le Roi d'Espagne et son Conseil croyoient ne pouvoir trop récompenser ceux qui leur mandoient de si bonnes nouvelles, ny assez oublier un homme comme luy qui ne leur en mandoit que de fâcheuses.

“ Alors *Dom Estevan de Gamarre* surpris de ce tableau de la Cour d’Espagne que luy fit son Parent : Puisqu’il ne s’agit luy répondit-il, pour faire fortune en ce Pays-cy, que de battre les François par de fausses relations, je ne désespere plus de mes affaires, et il s’en retourna aux Pays-Bas, où il profita si bien des avis de son Parent, qu’il s’attira bien-tôt plusieurs *Mercedes*, pour me servir du terme Espagnol, & il vit prospérer ses affaires à mesure qu’il travailloit par ses dépêches à ruiner en idée les affaires des François.”<sup>1</sup>

An apologue, even if not founded on fact, which may be recommended to the attention of those concerned.

§ 145. A good diplomatist will always endeavour to put himself in the position of the person with whom he is treating, and try to imagine what he would wish, do and say, under those circumstances. As Callières observes, p. 229—

“ Il faut qu’il se dépouille en quelque sorte de ses propres sentimens pour se mettre en la place du Prince [say, the Government] avec qui il traite, qu’il se transforme, pour ainsi dire en luy, qu’il entre dans ses opinions & dans ses inclinations, & qu’il se dise à lui-même après l’avoir connu tel qu’il est, *si j’étois en la place de ce Prince avec le même pouvoir, les mêmes passions & les mêmes préjugés, quels effets produiroient en moy les choses que j’ay à luy représenter?* ”

§ 146. Apropos of the story of Don Estevan de Gamarra, the following maxim of the Comte de Garden, himself a member of the profession, may be cited : “ Les devoirs d’un ambassadeur comprennent l’obligation à l’égard de son pays, s’exposer à tout, même à déplaire, en montrant les choses telles qu’elles sont et non pas telles que le désirent le souverain ou ses ministres.”<sup>2</sup>

§ 147. The duties of the head of a mission include also the furtherance of the legitimate private interests of his own countrymen residing in or passing through

<sup>1</sup> Callières, 307.

<sup>2</sup> Garden, *Histoire générale des Traités de paix*, etc., cvi.

the country to which he is accredited, the giving of advice to them when in difficulties, and especially intervention on their behalf, if they invoke his assistance when they are arrested and detained in custody. This should be done through the Ministry for Foreign Affairs, to which alone he is entitled to address himself. He should not, however, interfere in civil actions that may be brought against them, nor in criminal matters except where manifest injustice or a departure from the strict course of legal procedure has taken place. He must on no account occupy himself with the interests of any but the subjects or *ressortissants* (a much wider term) of his own sovereign or state, and especially not with those of the subjects of the local sovereign. Many governments expect their diplomatic agents to further the private commercial interests of their individual countrymen, and to endeavour to obtain for them the concession of valuable contracts. It is highly doubtful whether such intervention is in the long run beneficial to the higher interests of the state they represent.

§ 148. The diplomatic agent may issue passports to his own countrymen, and may certify signatures to legal documents. Members of the English diplomatic service may not charge fees for any services of this kind rendered to their countrymen.

§ 149. One of the chief functions of the head of a mission is to train the junior members of the service in the right performance of their duties, especially in the preparation of reports on subjects of interest, in drafting despatches and in paraphrasing the text of cyphered telegrams. This last should be done in such a manner as to afford no clue to the order of words in the original.

A distinguished Spanish diplomatist has said that : “ Les chefs sont faits pour que les secrétaires en disent du mal.” In many instances where this apophthegm

appears to be justifiable, the fault probably lies with the elder man—not always, however.

§ 150. A diplomatist should not hold government bonds or shares in a limited liability company in the territory of the state where he is accredited, and in general, neither real nor personal property which is under the local jurisdiction. *A fortiori* he should not engage in trade nor hold directorships, nor speculate on the Stock Exchange. He must not incur the risk of his judgment as to the financial stability of the state or of local commercial undertakings being deflected by his personal interest.

§ 151. Before sending home the report of any important conversation with the minister for Foreign Affairs, in which the latter has made statements or given promises that may afterwards be relied on as evidence of intentions or undertakings of the Government in whose name he is assumed to have spoken, it is advisable to submit to him the draft report for any observations he may desire to make. It is stated that Lord Normanby, when ambassador at Paris, reproduced a conversation of M. Guizot's, which the latter asserted was incorrect, and he pointed out that the report of a conversation made by a foreign agent can only be regarded as authentic and irrefragable when it has previously been submitted to the person whose language is being reported. He added that if Lord Normanby had conformed to this practice, he would have spoken otherwise and perhaps better.<sup>1</sup>

§ 152. A diplomatist ought not to publish any writing on international politics either anonymously or with his name. The rule of the English service is very strict in regard to the publication of experiences in any country where a diplomatist has served, without the previous sanction of the Secretary of State, and it applies to retired members as well as to those still on active service.

<sup>1</sup> E. Ollivier, *l'Empire Libéral*, i. 322.



§ 153. The man who speaks in a foreign tongue, not his own, is to a certain extent wearing a disguise. If you want to discover his ideas *de derrière la tête* encourage him to use his own language. Prince Bismarck is reported to have said: "Der alte (ich verstand Meyendorff) hat mir einmal gesagt: Trauen Sie keinen Engländer, der das Französische mit richtigem Accent spricht, und ich habe das meist bestätigt gefunden. Nur Odo Russell möchte ich ausnehmen."<sup>1</sup> This remark cuts both ways. On the other hand, a minister who can spare time to study the language of the country to which he is sent, will find its acquisition of great advantage. The surest way to gain admission to the heart of a nation is to give this proof of a desire to cultivate intimate relations with, and to understand the feelings of, the people.

§ 154. Prudence in regard to written communications to a Government is to be recommended. "Que nous étions déjà loin du jour, encore bien près cependant, où notre ambassadeur à Vienne, M. le Maréchal Maison, prenait sur lui d'écrire à son collègue de Constantinople (le général Guilleminot) que la guerre générale allait éclater, et où celui-ci se croyait fondé à passer, sur ce sujet, un office au Divan, et pour ainsi dire à en donner le signal."<sup>2</sup>

A diplomatic agent should beware of communicating the text of the instructions he receives, whether by telegram or written despatch, unless he is specifically ordered to do so. It sometimes happens that he is told to read a despatch to the minister for Foreign Affairs, and to leave, or not to leave with him a copy, as the case may be. With this exception, the ambassador should generally confine himself to making the sense of his instructions known by word of mouth. In communicat-

<sup>1</sup> Busch, ii. 172, and a similar passage, 41. Also Busch, *Bismarck: Some Secret Pages of His History*, i. 420.

<sup>2</sup> *Souvenirs du feu Duc de Broglie*, iv. 258. This was in 1831. Debidour, *Hist. Dipl. de l'Europe*, i. p. 293; Gentz., *Dépêches inédites*, i. p. 427.



ing the contents of a cyphered telegram he should be especially careful so to change the wording and order of sentences as to afford no clue to the cypher used by his Government.

The case of Bulwer at Madrid, in 1848, who enclosed, in an official note to the Spanish Minister for Foreign Affairs, a copy of a despatch of March 16, marked "confidential," in which Palmerston instructed him to offer to the Spanish Government advice on the internal affairs of the kingdom, is an example of the unwisdom of putting in writing language which, if used orally, would have been much less likely to give offence. (See § 423.)

§ 155. Palmerston in 1846 gave to the Comte de Jarnac, the French *Chargé d'affaires* in London, a copy of a despatch he was sending to the British representative at Madrid respecting "the Spanish marriages," in which he had also taken occasion to characterize the domestic policy of the Spanish Government in no flattering terms. This document was promptly forwarded from Paris to the French Ambassador at Madrid, who communicated it to Queen Christina. It had the result of creating prejudice against Great Britain and throwing the Spanish Court into the arms of Louis Philippe and Guizot, whose policy of marrying the young queen to an unsuitable husband and her sister to a French prince was thereby rendered successful. The late M. Ollivier suggests that it was given in order to alarm Louis Philippe.<sup>1</sup> Palmerston's own explanation is that to give Jarnac the despatch "was the civilest way of conveying to the knowledge of Louis Philippe opinions about Spanish questions which I well knew to be at variance with his views."<sup>2</sup> It was a rash proceeding.

<sup>1</sup> *l'Empire Libéral*, i. 317.

<sup>2</sup> Bulwer, *Life of Palmerston*, iii. 275.

§ 156. Three days after the *coup d'état* of December 2, 1851, Palmerston addressed to Lord Normanby, Ambassador at Paris, the following dispatch—

Foreign Office, Dec. 5, 1851.

MY LORD,

I have received and laid before the Queen your Excellency's despatch of the 3rd instant, requesting to be furnished with instructions for your guidance in the present state of affairs in France.

I am commanded by Her Majesty to instruct you to make no change in your relations with the French Government.

It is Her Majesty's desire that nothing should be done by her ambassador at Paris which could wear the appearance of an interference of any kind in the internal affairs of France.

I am, etc.

PALMERSTON.<sup>1</sup>

Lord Normanby thereupon visited the minister for Foreign Affairs, and informed him that he

"had received Her Majesty's instructions to say that I need make no change in my relations with the French Government in consequence of what had passed. I added that if there had been some delay in making this communication, it arose from some material circumstances not connected with any doubt on the subject. . . ."

Normanby had not been instructed *to say* anything. The despatch of December 5 was for his own guidance simply. How the dismissal of Palmerston followed, in consequence of the apparent discrepancy between these instructions and a conversation with Walewski, the French ambassador, in which Palmerston "expressed the view which he held as to the necessity and advantage for France and Europe of the bold and decisive step taken by the President" may be read in Evelyn Ashley (i. 286), and in Sir Theodore Martin's *Life of the Prince Consort* (ii. 411).

Lord Normanby was succeeded, on February 3, 1852, by Lord Cowley, the Government having been obliged to recall him at the request of the President, to whom he had shown ill-disguised hostility.<sup>2</sup>

<sup>1</sup> Evelyn Ashley, *Life of Lord Palmerston*, i. 294.

<sup>2</sup> Ashley, i. 292.

§ 157. In 1819 the French diplomatic representative at Vienna was a certain M. Caraman, who appears to have been a very self-opinionated and indiscreet person. The French Government had come to know that Prince Metternich had sent to the other Great Powers a memorandum discussing the course they would do well to pursue in case of the death of Louis XVIII. Caraman was instructed to find out what he could of the contents of this document, but he was to use great care, and above all, to avoid letting anything be known of the suspicions entertained at Paris as to its nature. The memorandum was reported to allege that the succession of the King's brother (afterwards Charles X) would encounter great opposition. Metternich having said something about the King's health to Caraman, the latter began to discuss with him what would probably occur on the death of the King. He suggested that nothing could be of greater importance than the attitude adopted by the diplomatic body at Paris, and even asked whether Metternich had any idea of the instructions which would be sent by the Powers to their representatives on the occasion. Metternich replied that as a first step he would propose a meeting of the allied sovereigns for the purpose of executing the Treaty of Chaumont<sup>1</sup> and thus ensuring the tranquillity of Europe.

Caraman reported the conversation in a despatch which was laid before the King, who was much struck by the simplicity displayed by his ambassador, in accepting in good faith what Metternich had said. He drew up with his own hand a memorandum, stating that no instructions to the representatives of the Powers would be needed, as the new king would ascend the throne by hereditary right. This was embodied in a despatch to Caraman, who was told that if the subject were again mentioned he was to use the language of the

<sup>1</sup> The Treaty of Chaumont bound the four Powers to confine France to her old frontiers, and to maintain each an army of 150,000 men for this purpose (Holland-Rose, *Life of Napoleon*, ii. 402-3).

King's memorandum, but merely as an expression of his own views, and, above all, he was not to reveal its origin to any person. What did he do? He actually gave a copy to Metternich, who showed it to the Emperor of Austria, and then persuaded Caraman that it might suitably form the text of a communication from France to the other Powers. Austria would lend it her support, and it would devolve on each Government to address appropriate instructions to its representative. By this means Metternich contrived to convert into a subject for negotiation with the Powers a matter which the King had taken especial pains to demonstrate was not open to discussion. Caraman was instructed to hold his tongue better in future, but the natural course would have been to recall him, if that had been possible without giving umbrage to Metternich, with whom Caraman was *persona grata*. In connexion with the so-called Congress of Troppau, in 1820, this agent was guilty of similar indiscretions, in communicating to Metternich documents which he had been strictly enjoined to show to no one.<sup>1</sup>

§ 158. The practice of carrying on secret diplomacy behind the back of the responsible minister resorted to by Louis XV and Napoleon III led to disastrous consequences. It may safely be asserted that if Ollivier had been consulted in 1870, before orders were telegraphed to Benedetti<sup>2</sup> to insist on a guarantee that the proposal to place a scion of a German princely house on the throne of Spain should never be renewed, the war between France and Germany would not have broken out on that issue.

Equally objectionable, though not attended with such fatal results, is the habit indulged in by some Foreign Offices of acting on information received from outsiders, instead of trusting their own diplomatic agent. In quite

<sup>1</sup> *Mém. du Chancel. Pasquier*, iv. 328-9; v. 17, 32, 45.

<sup>2</sup> A. Sorel, *Essais*, 169.

recent times rumours have been current of a sovereign employing a secretary of embassy to write to him direct on matters respecting which it was the duty of the secretary's chief to report. Telegrams exchanged direct between the Heads of States, without the knowledge and concurrence of the Minister for Foreign Affairs, are often followed by misunderstandings. In a constitutional state this cannot occur.

§ 159. A minister for Foreign Affairs should endeavour to acquire thorough personal knowledge of all his diplomatic agents, and as far as possible of the senior members of the foreign service who are in a position to be left on occasion in charge of a mission. It is a curious state of mind of a Minister who maintains that the personality of his agents is a matter of indifference to him: "When I ring the bell, I never know whether it is John or Thomas who answers it."<sup>1</sup> It is naturally impossible to ensure that all the members of a close service should be equally competent to fill every post. The vicissitudes of international politics, especially in times of crisis, are such as to render it difficult to have the right man always on the spot. But if the Secretary of State knows his men, he will be able to effect the necessary transfers when occasion demands them.

We venture to suggest that a Minister for Foreign Affairs ought always to have a clear idea of the policy to be pursued in regard to each separate foreign state, and to seize every convenient opportunity of discussing it with the heads of the respective diplomatic missions. It is to be regretted that the earlier practice of providing an envoy proceeding to his post for the first time with detailed instructions has in some countries fallen into disuse. The French *Recueil des instructions données aux ambassadeurs et ministres de France depuis les traités*

<sup>1</sup> Malmesbury, *Mem. of an Ex-Minister*, ii. 153. It is there related of the 13th Earl Derby, and is also attributed to another eminent statesman, who was Prime Minister and Secretary of State for Foreign Affairs.



*de Westphalie jusqu'à la Révolution* contains admirable models of the form such instructions should take.

§ 160. A diplomatist must be on his guard to protect the dignity of the state which he represents. Thus, the Duc de Mortemart, French ambassador at Petersburg, having been invited to attend a performance of the *Te Deum* in celebration of Russian victories over the Turks, learnt that it was to be given in a church decorated with flags taken from the French, and on this ground declined to be present. This course was approved by both his own Government and by the Emperor of Russia.<sup>1</sup> In October 1831, after the capture of Warsaw from the Polish insurgents by the Russian troops, M. Bourgoing, the French minister, refused to be present at a *Te Deum* ordered to celebrate the triumph of the Russian Government, and he informed Count Nesselrode of his intention to absent himself, his reason being the strong sympathy for the Poles which was felt in France. On the same day he dined at an official banquet given at the Austrian embassy, went publicly the next day to the theatre, and passed the evening at a private house. It does not appear that his conduct was made a ground of complaint to the French Government by the Emperor.<sup>2</sup>

But it is scarcely admissible for an envoy to refuse to be present on such occasions, merely on the ground of friendship between his own country and the belligerent over whose defeat the rejoicing is held.

§ 161. Governments sometimes adopt a particular course of action in reliance on statements and views which are subsequently shown to be untenable, but having once committed themselves publicly, they find it difficult, nay, almost impossible, to recede from the position they have taken up. An instance of this is the Crampton case (§ 426), in which the United States

<sup>1</sup> Garden, *Traité complet de la Dipl.*, ii. 84.

<sup>2</sup> F. de Martens, *Recueil*, etc., xv. 140.



Government based a request for the recall of a diplomatic agent on testimony which eventually proved to be untrustworthy.

§ 162. In former times a wide discretion in the interpretation of his instructions was permitted to an envoy, in case it became necessary to take a sudden decision, but in these days, when telegraphic communication is universal, if he is of opinion that his instructions are not perfectly adapted to secure the object in view, he can easily ask for the modification he judges to be desirable. In doing this he will be well-advised to explain his reasons at full length. It is better to spend money on telegrams than to risk the failure of a negotiation.

§ 163. The head of a mission should be careful that the affairs, the manners and customs, of the country in which he is residing are not criticized at his table. What he or his guests may say on such subjects is sure to be repeated to his disadvantage.

§ 164. In concluding a written agreement with the State to which you are accredited, do not be in too great a hurry to sign, lest in your haste important stipulations should be slurred over or inadequately expressed. As far as possible, secure the use of clear and definite language, the meaning of which shall not be open to doubt or dispute.

§ 165. In connexion with the second partition of Poland, in 1793—

“ Lord Grenville déclara à Starhemberg que si l’Autriche trempait dans cette opération, l’alliance en pourrait être compromise. ‘ Cette conduite, dit-il, choquerait la nation anglaise, déjà indignée pour la même raison contre la Russie et la Prusse ; la cour de Londres, ne reconnaissant et ne voulant jamais reconnaître une possession aussi injuste, ne pourrait la garantir.’ Thugut aurait pu répondre que le mot jamais est de ceux qu’en diplomatie on peut prononcer impunément, car il n’y a pas d’exemple qu’il ait arrêté quelqu’un ou empêché quelque chose.”<sup>1</sup>

<sup>1</sup> A. Sorel, *l’Europe et la Révol. Française*, iii. 453.

§ 166. A diplomatist must be on his guard against the notion that his own post is the centre of international politics, and against an exaggerated estimate of the part assigned to him in the general scheme. Those in whose hands is placed the supreme direction of foreign relations are alone able to decide what should be the main object of state policy, and to estimate the relative value of political friendships and alliances.

“ Quand on est sur un point d'Europe, on y rapporte tout, et je remarque que les meilleurs esprits se laissent aller à penser que tout est perdu, si on ne sacrifie pas tout à l'extrême bienveillance de la cour où ils résident ” (d'Argenson to Vauréal, in Duc A. de Broglie, *Maur. de Saxe et le marq. d'Arg.*, ii. 6).

“ Enfin, absorbé par l'affaire spéciale dont ils sont chargés, ils ne se rendent pas compte de sa véritable place dans l'ensemble même de la politique ; ils en exagèrent l'importance, au risque, par cette exagération, de gêner ou de compromettre l'action bien plus capitale ailleurs de leur gouvernement ” (E. Ollivier, *l'Empire Libéral*, iii. 118).

But, perhaps, the blame is not all theirs, when they are not kept informed what is that general policy, and the varying phases it assumes from time to time.

“ Quel rude métier que celui de diplomate ! Je n'en connais aucun qui exige autant d'abnégation, autant de promptitude à sacrifier ses intérêts au devoir, autant de patience, et à certains moments, autant de courage. L'ambassadeur, qui remplit bien les obligations de son état, ne trahit jamais la fatigue, ni l'ennui, ni le dégoût. Il dissimule les émotions qu'il éprouve, les tentations de défaillance qui l'assaillent. Il sait passer sous silence les déceptions amères qu'on lui ménage, autant que des satisfactions inattendues dont parfois, mais rarement, le hasard le régale. Jaloux de sa dignité, il ne cesse jamais d'être prévenant, a soin de ne se brouiller avec personne, ne perd jamais sa sérénité, et, dans les grandes crises, quand la question de guerre se pose, se montre calme, impassible et sûr du succès ” (Comte Hübner, *Neuf ans de souvenirs d'un ambassadeur*, i. 176).

He must be able to listen to a travesty of the truth, without giving any indication of his disbelief.

§ 167. The moral qualities—prudence, foresight, intelligence, penetration, wisdom—of statesmen and nations have not kept pace with the development of the means of action at their disposal: armies, ships, guns, explosives, land transport, but, more than all, that of rapidity of communication by telegraph and telephone. These latter leave no time for reflection or consultation, and demand an immediate and often a hasty decision on matters of vital importance.

## CHAPTER X

### LATIN AND FRENCH PHRASES

§ 168. *Ultimatum*—§ 169. Russia to Turkey in 1826—§ 170. Austria to Piedmont in 1849—§ 171. Palmerston in the Don Pacifico case—§ 172. Menschikoff to Turkey in 1853—§ 173. Hague Convention No. 3 of 1907—§ 174. Austria to Serbia, 1914—§ 175. Germany and France—§ 176. Germany to Russia—§ 177. Germany to Belgium—§ 178. Great Britain to Germany—§ 179. Other uses of the term—§ 180. In the course of a negotiation—§ 181. La Chétardie's threat to cease all communication—§ 182. Used to describe preliminary agreement—§ 183. Offer to make peace on terms—§ 184. To describe conditions of consent to a marriage—§ 185. Thiers' use—§ 186. Peace terms formulated by Austria in 1855—§ 187. The Vienna Note—§ 188. *Uti possidetis* and *Statu quo*—§ 189. *Ad referendum* and *Sub spe rati*—§ 190. *Ne varietur*—§ 191. *Sine quâ non*—§ 192. *Casus belli* and *Casus fœderis*—§ 193. *Quos Ego*. FRENCH TERMS: § 194. *Démarche*—§ 195. *Fin de non recevoir*—§ 196. *Prendre Acte* and *Donner Acte*—§ 197. *Donner la main*—§ 198. *Dénoncer*—§ 199. National (sb.) and *ressortissant*.

§ 168. *Ultimatum*. This term signifies a Note or memorandum in which a Government or its diplomatic representative states the conditions on which the State in whose name the declaration is made will insist. It should contain an express demand for a prompt, clear and categorical reply, and it may also require the answer to be given within a fixed limit of time. This is as much as to say that an *ultimatum* embodies the final condition or concession, "the last word," so to speak, of the person negotiating.<sup>1</sup> It ordinarily, but not always, implies a threat to use force, if the demand is not complied with.

§ 169. A good example of this is contained in the last paragraph of a Note addressed by the Russian *Chargé*

<sup>1</sup> Cussy, *Dictionnaire du Dipl. et du Consul*, s. v.

*d'affaires* at Constantinople to the Reis-Effendi in 1826, which was thus worded—

Le soussigné terminera la tâche que lui imposent les instructions de son souverain, en déclarant à la Porte Ottomane que, si, contre la légitime attente de l'Empereur, les mesures indiquées dans les trois demandes qui forment le présent office n'auraient pas été mises complètement à exécution dans le délai de six semaines, il quitterait aussitôt Constantinople. Il est facile aux ministres de S. H. de prévoir les conséquences immédiates de cet événement.

Le soussigné, etc.

MINCIAKI.<sup>1</sup>

Constantinople,  
le 5 avril, 1826.

§ 170. After the battle of Novara (March 23, 1849) negotiations for peace took place at Milan between Austria and Piedmont, and, difficulties having arisen at the last moment respecting an amnesty to the Lombard subjects of Austria who had sided with Piedmont, Marshal Radetski gave notice that if an agreement was not arrived at within four days he would terminate the armistice and resume military operations.<sup>2</sup>

§ 171. Another case of *ultimatum* in the ordinary sense occurred in 1850, when, by the orders of Palmerston, the British minister at Athens presented a demand for the settlement of the Don Pacifico claim within twenty-four hours, failing which a blockade of the coasts of Greece would be established and Greek merchant ships seized.<sup>3</sup>

The Note from the British minister to the Greek minister for Foreign Affairs of Jan. 5/17, 1850, after making a formal demand for reparation for the wrongs and injuries inflicted in Greece upon British and Ionian subjects, and the satisfaction of their claims within twenty-four hours, announced that if the demand were not literally complied with within that period after

<sup>1</sup> Garden, *Traité complet de la Diplomatie*, iii. 344.

<sup>2</sup> E. Ollivier, *l'Empire Libéral*, ii. 241.

<sup>3</sup> *Brit. and For. State Papers*, xxxix. 491.

the Note had been placed in the hands of the Hellenic Minister for Foreign Affairs, the Commander-in-Chief of Her Majesty's Naval Forces in the Mediterranean would have no other alternative (however painful the necessity might be to him) than to act at once on the orders he had received from Her Majesty's Government.<sup>1</sup>

§ 172. On May 5, 1853, Prince Menschikoff demanded the exclusive protectorate of the Greek Christians in Turkey by an *ultimatum*, which was rejected by the Sultan, and on June 22 the Russian troops crossed the Pruth.<sup>2</sup> He had demanded an answer within three days. But Menschikoff sent in a further Note, and a last one on May 18.<sup>3</sup>

§ 173. Art. I of the Hague Convention No. 3 of 1907 declares that—

“ Les Puissances contractantes reconnaissent que les hostilités entre elles ne doivent pas commencer sans un avertissement préalable et non équivoque, qui aura, soit la forme d'une déclaration de guerre motivée, soit celle d'un *ultimatum* avec déclaration de guerre conditionnelle.”<sup>4</sup>

§ 174. Austrian *ultimatum* to Serbia. This took the form of a Note, dated July 23, 1914, to the Serbian Government, containing various demands, and requiring an answer by six o'clock in the evening of the 25th. The reply of the Serbian Government not being regarded as satisfactory, the Austro-Hungarian minister left Belgrade, and war was declared against Serbia on the 28th.

§ 175. On July 31, 1914, the German Ambassador in Paris asked the president of the council (who was also minister for Foreign Affairs) what would be the attitude

<sup>1</sup> See also *l'Empire Libéral*, ii. 320, and F. de Martens, *Recueil*, etc., xii. 262.

<sup>2</sup> *l'Empire Libéral*, iii. 173, 176. See also *Eastern Papers*, i. 197.

<sup>3</sup> Kinglake, *Crimean War*, i. 164, 167.

<sup>4</sup> Cf. Oppenheim, *International Law*, ii. § 95.



of France in the case of war between Germany and Russia, and said he would return for a reply at one o'clock on the following day. On August 3, at 6.45, alleging acts of aggression committed by French aviators, he communicated a declaration of war. This does not appear to have been preceded by an *ultimatum*.

§ 176. At midnight on July 31, 1914, the German Ambassador at Petersburg, by order of his Government, informed the Russian minister for Foreign Affairs that if within twelve hours Russia had not begun to demobilize, Germany would be compelled to give the order for mobilization, and at 7.10 p.m., on August 1, the German Government, on the alleged ground that Russia had refused this demand, presented a declaration of war. The demand for demobilization, then, was in the nature of an *ultimatum*.

§ 177. The German *ultimatum* to Belgium of August 2, 1914, demanded permission to march through Belgian territory, and threatened to regard Belgium as an enemy, in case that—

“Sollte Belgien den deutschen Truppen feindlich entgegen treten, insbesondere ihrem Vorgehen durch Widerstand der Maas-Befestigungen oder durch Zerstörungen von Eisenbahnen, Strassen, Tunneln oder sonstigen Kunstbauten Schwierigkeiten bereiten.”

The Note of the German Minister presenting this demand did not mention any length of time for an answer, but it appears from the telegram of August 3 sent out by the Belgian minister for Foreign Affairs to the Belgian ministers at Petersburg, Berlin, London, Paris, Vienna and the Hague, that the German Minister had verbally required an answer within twelve hours.

§ 178. On the same occasion the British Government, on July 31, asked the German and French Governments to engage to respect the neutrality of Belgium, adding

that it was important to have an early reply. France at once acceded to the request, but, no reply having been received from the German Government, Great Britain on August 4 protested against a violation of the treaty by which Belgium was constituted a neutral state, and requested an assurance that her neutrality would be respected by Germany. Later in the day a telegram was sent to Berlin, instructing the Ambassador to ask for the same assurance to respect the neutrality of Belgium as had been given by France, and for a satisfactory reply to the requests of July 31 and of that of the morning of August 4, to be received in London by midnight. These requests, especially the last, amounted in substance to an *ultimatum*.

These cases are cited because they are (with the exception of the Italian declaration of war against Austria-Hungary on May 23, 1915) the most recent ones on record.

§ 179. But the meaning of *ultimatum* is not restricted to the sense which it bears in the foregoing examples. During the course of a negotiation it may imply the *maximum* amount of concession which will be made in order to arrive at an agreement, where no resort to compulsion is contemplated in case of refusal. Thus, in connexion with the delays in payment of the Silesian loan, Frederick the Great, in writing to Klinggräff, his special envoy to London, on November 25, 1749, said—

“Puisque vous ne désespérez pas encore tout-à-fait de la réussite de l'affaire de la nouvelle convention sur les dettes de Silésie, j'attendrai que vous me mandez l'*ultimatum* des propriétaires, à fin de pouvoir m'arranger finalement d'une façon ou d'autre, pour sortir de cette dette onéreuse.”<sup>1</sup>

Here there is no question of an appeal to force, but simply of a bargain to be struck with the bondholders.

In subsequent correspondence with Michell, the secretary of embassy left in charge of the Prussian

<sup>1</sup> *Pol. Cor.*, vii. 174.

legation in London, and with Earl Marischal at Paris, Frederick frequently intimates his willingness to compromise the claims of Prussian subjects against the British Government for the losses they had suffered through the capture of their ships and cargoes by English privateers, for a fixed sum. In a letter to Earl Marischal of August 21, 1753, he tells him—

“ M'étant expliqué dans la sus-dite dépêche [from the Prussian Foreign Department] à vous que ma première demande pour le dédommagement de mes sujets était de 120,000 écus d'Allemagne, ou de 20,000 livres sterling, et que, s'il n'y avait pas moyen de porter l'Angleterre à payer cette somme, je voudrais me contenter enfin de celle de 100,000 écus d'Allemagne, comme un *ultimatum* auquel j'étais résolu de me tenir inébranlablement et en qualité de tout dernier mot, je veux cependant vous dire encore que, nonobstant ce que dessus, si la France trouve le ministère tout-à-fait inflexible sur le susdit *ultimatum*, en sorte qu'il n'y aurait nul moyen d'en obtenir la somme de 100,000 écus, alors mon plus dernier mot sera la somme de 80,000 ou quatre vingt mille écus comme *ultimatum* de mes *ultima*, mais dont aussi je ne me relâcherai absolument pas.”<sup>1</sup>

He employs the word in this sense over and over again in his correspondence. In the negotiations respecting this affair, which Frederick frequently spoke of as *une bagatelle*, it means no more than the irreducible minimum sum which he would accept.

In connexion with the points in dispute between Great Britain and France relating to American affairs, Michell reported to Frederick, on March 28, 1755, that Mirepoix, the French ambassador, had been instructed to inform the British Government that his own Government was much surprised at the contents of a [counter] proposal from them; whereupon Newcastle had replied to him that the proposal in question was not England's *ultimatum*, i.e. her last word.<sup>2</sup>

<sup>1</sup> *Pol. Cor.*, x. 55; Satow, *The Silesian Loan*, etc., 176.

<sup>2</sup> *Pol. Cor.*, xi. 112.

§ 180. For the use of *ultimatum* in the course of a negotiation to describe an "irreducible minimum of what would be regarded as satisfactory," reference may be made to the discussions carried on in 1761 between the French and British Governments towards the end of the Seven Years War.<sup>1</sup> These were initiated by a letter from the Duc de Choiseul to Pitt, of March 26, enclosing a memorial proposing peace on the basis of *uti possidetis* at different dates for the East and West Indies, Africa and Europe. Various papers were exchanged between the two Courts, and it was agreed to send M. Bussy to London and Mr. Stanley to Paris to carry on the negotiation. An "Answer from the British Court to the Memorial of French propositions," also headed "A paper of Articles to be delivered to Mr. Stanley, as the definitive propositions from the Court of Great Britain," dated July 29, was answered by France on August 5, in a paper headed "Ultimatum of the Court of France, as a reply to the Ultimatum remitted to the Duc de Choiseul by Mr. Stanley." In a letter of Bussy's to Pitt enclosing this counter-proposal, he repeatedly makes use of *ultimatum* to denote the respective demands made, and so does Pitt in his reply of August 15.<sup>2</sup> These were followed by a final proposal delivered by Bussy in September, which Flassan terms an *ultimatissimum*, which is equivalent to "a very last offer." The British Government declined it, and the negotiations were broken off.

In narrating the attempts to agree on terms of peace with the Dutch which were made by Louis XIV at various times during the War of the Spanish Succession from November 1705 onwards, and the successive additional demands of the Dutch negotiators, another

<sup>1</sup> Jenkinson, iii. 128, from *An Historical Memorial of the Negociation of France and England, from the 26th of March, 1761, to the 20th of September of the same year, with the Vouchers translated from the French original, published at Paris by Authority.*

<sup>2</sup> Jenkinson, *A Collection of all the Treaties, etc.*, iii. 128, 154; Flassan *Hist. de la Dipl. Française*, vi. 442.

French author says : " Le 23 juin [1710] Louis XIV envoie à ses plénipotentiaires l'ultimatissimum de ses concessions." <sup>1</sup>

§ 181. In May 1741 La Chêtarde, French Ambassador to Russia, was ordered to inform Count Ostermann that he would break off all communication with the Government of the Regent Anna Léopoldovna unless he were allowed to present his credentials to the Tsar himself, a child one year of age.<sup>2</sup> This threat Vandal designates as an *ultimatum*. Ostermann and the Regent finally gave way on this point.

§ 182. At the Congress of Teschen the plan of pacification fathered by the King of France was adopted by the Court of Vienna, and is described as its *ultimatum*. These terms, with slight modifications, were accepted by the King of Prussia, and became his *ultimatum*, which again was adopted by Vienna. Kaunitz, afterwards writing to Breteuil, the mediator appointed by the King of France, used the following remarkable language—

" L'ultimatum arrêté entre les deux puissances belligérantes est une loi commune qu'elles se sont prescrite ; elles ne sont en droit de se proposer rien au delà de part et d'autre et encore moins de rien exiger au delà." <sup>3</sup>

In connexion with the same negotiation " la dernière modification de ses prétensions à l'alleu de la succession de Bavière " becomes the *ultimatum* of the Elector of Saxony, and subsequently it was proposed by the mediators to frame a scheme of arrangement of these claims, and to impose it upon the Elector Palatine and the Elector of Saxony as an "*ultimatum*." <sup>4</sup>

In connexion with the dispute over the proposed monopoly of the sulphur trade in Sicily (§ 636), the

<sup>1</sup> Vast, *Les Grands Traités*, iii. 37.

<sup>2</sup> *Louis XV et Elizabeth*, 141.

<sup>3</sup> *Sbornik*, etc., lxx. 454.

<sup>4</sup> *Ibid.*, 251, 385.



Neapolitan minister in London wrote to Palmerston on August 13, 1840, announcing the King of Naples' agreement to the "*ultimatum*" (or plan of arrangement) proposed by the Cabinet of the Tuileries on July 5, and already accepted by the British Government (P.R.O., F.O. 70/172).

§ 183. Talleyrand, in his memoirs,<sup>1</sup> speaks of the *ultimatum* of the allies to Napoleon at Châtillon in March 1814, which was expressed in the draft treaty adopted by them on February 17, and sent by Metternich to Caulaincourt.<sup>2</sup> This was an offer to make peace on the basis of the territorial limits of France as they were in 1792, and implied the maximum of what one party was willing to concede to the other.

§ 184. In a letter from Louis XVIII respecting a proposed marriage between the Grand Duchess Anne and the Duc de Berry, the King said—

"Je n'ai rien à ajouter à ce que je vous ai dit sur les grandes affaires ; mais il en est une que, d'une manière ou d'autre, je voudrais voir terminer, c'est celle du mariage. J'ai donné mon *ultimatum*. Je ne regarderai point à ce qui pourra se passer en pays étrangers, mais la duchesse de Berry, quelle qu'elle puisse être, ne franchira les frontières de la France que faisant profession ouverte de la religion Catholique, apostolique, romaine. A ce prix je suis non seulement prêt, mais empressé de conclure. Si, au contraire, ces conditions ne conviennent pas à l'empereur de Russie, qu'il veuille bien le dire : nous n'en resterons pas moins bons amis, et je traiterai un autre mariage." <sup>3</sup>

In this case *ultimatum* merely meant "condition sine quâ non."

§ 185. Great Britain, Austria, Prussia and Russia had signed, July 15, 1840, a convention by which they

<sup>1</sup> Edited by the Duc de Broglie, ii. 148.

<sup>2</sup> The date of the first sitting was February 17, according to Fournier *Der Congress von Châtillon*, 149.

<sup>3</sup> *Mém. du Prince de Talleyrand*, ii. 531.



agreed to impose certain terms of peace with the Sultan on Mehemet Ali of Egypt.<sup>1</sup> M. Thiers issued a Note in which he said—

“ La France se croit obligée de déclarer que la déchéance du vice-roi serait une atteinte à l'équilibre général. Disposée à prendre part à tout arrangement acceptable qui aurait pour base la double garantie de l'existence du Sultan et du vice-roi d'Egypte, elle se borne dans ce moment à déclarer que, pour sa part, elle ne pourra consentir à la mise en exécution de l'acte de déchéance prononcée à Constantinople.”

On this M. Ollivier remarks that the Note had the form of a public *ultimatum*, which its author had never intended to be followed up by war.<sup>2</sup>

§ 186. Towards the end of 1855 Gortschakow employed his son-in-law, the Saxon Minister at Paris, to carry on secret negotiations with Walewski. On these coming to the knowledge of Buol, the latter offered to act as mediator, and, if his mediation were not accepted, to present an ultimatum to Russia. The terms were reluctantly assented to by Palmerston, and Austria notified the conditions of peace to Russia on December 20, 1855, “ sous forme d'ultimatum.” The Emperor Alexander proposed some modifications which Buol refused to admit. He asked for “ yes or no,” and, in the event of a negative, the Austrian ambassador was to apply for his passports. After consulting his principal advisers the Tsar gave way, and expressed his willingness to accept the Austrian *ultimatum* as a basis for peace preliminaries. These were signed at Vienna, February 1, 1856.<sup>3</sup> This action on the part of Austria is termed by M. Ollivier “ *une démarche décisive*.”

§ 187. The diplomatic document known in history as “ the Vienna Note ” is said by M. Ollivier to have been offered to the Porte for its signature *sous la forme*

<sup>1</sup> *Corresp. Rel. to the Aff. of the Levant*, i. 689.

<sup>2</sup> *l'Empire Libéral*, i. 299.

<sup>3</sup> *Ibid.*, iii. 330, 335.

*d'un ultimatum*.<sup>1</sup> If the expression is here used with propriety, it is very far from implying a threat of hostilities. It was no more than a strong recommendation to the Turkish Government to adopt and sign the Note in question.

§ 188. *Uti possidetis* and *Statu quo*.

These two phrases often amount to the same thing, and are used to denote actual possession by right of conquest, occupation or otherwise, at some particular moment, which has to be defined with as much exactness as possible in the proposals for a treaty of peace, or in the treaty itself.<sup>2</sup> But while *uti possidetis* relates to the possession of territory, the *status quo* may be the previously existing situation in regard to other matters, *e.g.* to privileges enjoyed by one of the parties at the expense of the other, such as the French privilege of taking and drying fish on a portion of the coast of Newfoundland.

Both expressions frequently occur in the course of the "Historical Memorial" to which reference is made under "Ultimatum."

In the memorial of the King of France of March 16, 1761, it was proposed.

"that the two Crowns shall remain in possession of what they have conquered from each other, and that the situation in which they shall stand on the 1st September, 1761, in the East Indies, on the 1st July in the West Indies and Africa, and on the 1st May following in Europe, shall be the position which shall serve as a basis to the treaty which may be negotiated between the two Powers."<sup>3</sup>

The English reply accepted the *statu quo*, but it is

<sup>1</sup> *Ibid.*, iii. 177.

<sup>2</sup> Foster, *A Century of Amer. Dipl.*, 246, defines *uti possidetis* by the belligerents of the territory occupied by their armies at the end of the war, but this seems too absolute. Cf. Oppenheim, *Intern. Law*, 2nd edit. ii. 324.

<sup>3</sup> Jenkinson, *Treaties*, etc., iii. 90.

alleged to have said nothing "with regard to the epochas." It did, in fact, say that

"expeditions at sea requiring preparations of long standing, and depending on navigations which are uncertain, as well as on the concurrence of seasons, in places which are often too distant for orders relative to their execution to be adapted to the common vicissitudes of negotiations, which for the most part are subject to disappointments and delays, and are always fluctuating and precarious : from whence it necessarily results, that the nature of such operations is by no means susceptible, without prejudice to the party who employs them, of any other epochas than those which have reference to the day of signing the treaty of peace."

The French Government took this to mean that the date of the treaty of peace should be the epoch to fix the possessions of the two Powers, and delivered a memorial of April 19, insisting on the dates previously proposed by them. On this, the British Government (*i.e.* William Pitt) replied that they were ready to negotiate as to the dates. The French envoy to London was furnished with "extremely simple instructions."

"The basis of them regarded the proposition *Uti Possidetis* and he was enjoined to demand of the British Minister, whether the King of England accepted of the periods annexed to the proposition of *Statu quo*, and if His Britannic Majesty did not accept of them, what new periods he proposed to France ? " <sup>1</sup>

The British proposal in reply was that July, September and November should respectively be the periods for fixing the *Uti possidetis*. So much difficulty arose from this original proposal of *Uti possidetis*, that it was ultimately replaced by a series of mutual concessions of territory to take place in consequence of the treaty which might be eventually concluded. In the preliminaries of peace finally signed at Fontainebleau, November 3, 1762, it was provided, for instance, by

<sup>1</sup> Jenkinson, *Treaties*, etc., iii. 109, 116.

Art. 7 that the fortress in Guadaloupe, Mariegalante, Desirade, Martinico and Belleisle<sup>1</sup> should be restored in the same condition as when they were conquered by the British armies, i.e. *in statu quo*. The French trading posts in India "in the condition in which they now are," also *in statu quo*.<sup>2</sup> These stipulations were renewed in the definitive treaty of peace of February 10, 1763.<sup>3</sup>

In stipulating for *uti possidetis* or for *statu quo*, it is consequently of the utmost importance to fix the date to which either expression is to relate.

When on the conclusion of a treaty of peace the belligerents agree mutually to restore all their conquests, they are said to revert to the *status quo ante bellum*.<sup>4</sup> In 1813 Napoleon drafted instructions for his plenipotentiaries to the Congress of Prague: "Quant au bases, n'en indiquer qu'une seule: l'*Uti possidetis ante bellum*," meaning by that the relative possessions of France and the Continental alliance before the invasion of Russia in 1812.<sup>5</sup>

In May 1850 the French President, Prince Napoleon, demanded of the Porte that the privileges accorded to the Latin Church by the treaty between Francis I and Soliman should be upheld, without regard to those granted to the Greek Church by various firmans. The Emperor Nicholas resented this action, and addressed a letter to the Sultan Abdul Medjid in which he insisted on the maintenance of the *statu quo* with respect to the Holy Places, i.e. the arrangements that had existed up to that time in virtue of the firmans.<sup>6</sup> This is a case in which *statu quo* has nothing to do with the state of territorial possession.

English writers ordinarily use the form *status quo*. *Statu quo* is the foreign expression for the same thing.

### § 189. *Ad referendum* and *Sub spe rati*.

<sup>1</sup> *Ibid.*, 170.

<sup>2</sup> *Ibid.*, 171.

<sup>3</sup> *Ibid.*, 177.

<sup>4</sup> J. W. Foster, *A Century of Amer. Dipl.*, 246.

<sup>5</sup> Sorel, *l'Europe et la Rév. française*, viii. 159.

<sup>6</sup> E. Ollivier, *l'Empire Libéral*, ii. 323.

When the sovereign whom a diplomatic agent represents, or to whom he is accredited, dies, the mission of the agent is, strictly speaking, at an end. During the interval which must elapse before he can receive fresh credentials, he may carry on a negotiation which has already been commenced, *sub spe rati*, i.e. in the expectation that what he promises will be ratified by his sovereign.<sup>1</sup>

It has also been said that when a proposal is made to an agent, and the case is urgent and the distance from his own country is considerable, he may accept or decline it *sub spe rati*.<sup>2</sup> But in these days, when telegraphic communication is possible between capitals even the most distant from each other, a prudent diplomatist will take care not to commit his Government by a provisional acceptance of what is not warranted by his previous instructions. The utmost he will do will be to receive the proposal *ad referendum*. *Sub spe rati* may be explained to indicate that the agent is himself inclined to favour the proposal, but there is no reason why he should compromise either himself or his Government.

On the same occasion as that referred to in § 188, Napoleon's instructions were—

“ De ne rien se permettre qui ne respire le désir de la paix, et d'une paix honorable. Ils ne doivent pas presser la marche des négociations . . . ils laisseront tout dire et répondront en prenant *ad referendum*. Ils expédieront un courier en attendant la réponse.”<sup>3</sup>

Anstett, the Russian plenipotentiary at Prague, was instructed that—

“ Le congrès, s'il conduisait à quelque chose, ne devait conduire qu'à une entente sur des *conditions préliminaires* : si l'Autriche semblait vouloir modérer celles qui avaient été

<sup>1</sup> De Martens-Geffcken, i. 187.

<sup>2</sup> Pradier-Fodéré, i. 370.

<sup>3</sup> Sorel, *ibid.*, viii. 159.

arrêtées à Reichenbach, Anstett s'y opposerait et réclamerait des conditions plus rigoureuses. Si Napoléon les acceptait, Anstett dirait qu'il n'avait pas de pouvoir pour traiter, même *sub spe rati* ; il ne pourrait que prendre note *ad referendum* du consentement de Napoléon." <sup>1</sup>

§ 190. *Ne varietur*.

Louis Philippe wrote to Guizot, July 24, 1846—

" Une lettre de vous à Bresson, qu'il lui serait enjoint de lire à sa Majesté, et dont il devrait lui demander de laisser entre ses mains une copie *ne varietur*,"

*i.e.* from which no departure can be permitted. Again, an "*acte authentique*" is an instrument certified by a third authority who is competent for the purpose. It has a public and permanent character. It is perfect in itself, without ratification. It is inserted in the minutes of the notaries, *ne varietur*.<sup>2</sup>

§ 191. A condition *sine quâ non* denotes a condition that must be accepted, if an agreement is desired by the party to whom it is proposed.

§ 192. *Casus belli* and *Casus fœderis*. These appear to be sometimes confused.

The former signifies an act or proceeding of a provocative nature on the part of one Power which justifies the offended Power in making or declaring war. Palmerston defined it in 1853 as "a case which would justify war."<sup>3</sup>

The latter is an offensive act or proceeding of one State towards another, or any occurrence bringing into existence the condition of things which entitles the latter to call upon its ally to fulfil the undertakings of the alliance existing between them, *i.e.* a case contemplated by the treaty of alliance.

<sup>1</sup> *Ibid.*, 155.

<sup>2</sup> De Maulde-la-Clavière, ii. 3 ; 199.

<sup>3</sup> E. Ashley, *Life of Lord Palmerston*, i. 35.



Thus when Frederick the Great fell upon Saxony, at the end of August 1756, the King of Saxony being an ally of the Empress-Queen Maria Theresa, Louis XV was obliged to come to his assistance in virtue of the Treaty of Versailles of May 1, 1756. As Vandal observes, "*Le casus fœderis* était flagrant. La Russie, de son côté, ne pouvait se dispenser d'exécuter ses anciens engagements avec l'Autriche, renouvelés et étendus en 1746."

Frederick William IV of Prussia in 1849-50 proposed to the kings of Saxony and Hanover the establishment of a Northern Confederation, from which Austria was to be excluded. Schwarzenberg, the Austrian Chancellor, opposed the scheme. "Il le notifia d'un ton impérieux ; il ne tolérerait pas la création d'un état fédéré, même dans le nord de l'Allemagne, en dehors de l'Autriche. Ce serait un *casus fœderis*." If by these words the author meant that such a proceeding would give to Austria the right of appealing to the constitution of the Germanic Body as settled at Vienna in 1815, the expression is correct.<sup>1</sup> But if he meant that it would lead to war it is not exact.

After the evacuation of the Principalities by Russia on August 2, 1854, Buol accepted the four conditions on which France and England were willing to make peace. Russia having refused these terms, Paris and London pressed Vienna to conclude an offensive and defensive alliance. "Si le refus de Russie ne créait pas à l'Autriche un *casus belli*, il ne lui laissait plus de *casus pacis*."<sup>2</sup> But on November 20 Russia intimated her assent to these conditions as a basis of peace negotiations. Austria, however, on December 2 signed a treaty with France and England, undertaking to push for the adoption of these four conditions, and a secret article was added, stipulating that if they could not be obtained by negotiation, measures would be taken to give effect to an offensive and defensive alliance. The Russian acceptance rendered it possible for Austria to decline the

<sup>1</sup> E. Ollivier, *l'Empire Libéral*, ii. 345.

<sup>2</sup> *Ibid.*, iii. 206.

obligation to “poser le *casus belli*.” In consequence, fresh negotiations were initiated at Vienna, while warlike operations continued.<sup>1</sup>

At the Congress of Paris, April 15, 1856, the English, French and Austrian plenipotentiaries signed a convention by which a reciprocal engagement was entered into, to regard as a *casus belli* any violation of the main treaty, and any attempt, no matter from what quarter it might be made, on the independence and integrity of the Ottoman empire ; it also fixed the naval and military contingents to be mobilized in case this *casus fœderis* should arise.<sup>2</sup>

Lord Clanricarde, British ambassador at Petersburg, wrote on July 8, 1839, to Palmerston, that Count Nesselrode had on every occasion expressed to him the desire of the Russian Government to avoid the possibility of a *casus fœderis* arising in virtue of the treaty of Unkiar-Skelessi<sup>3</sup> under the article quoted on this page.

Article 3. Par suite du plus sincère désir d'assurer la durée, le maintien et l'entière indépendance de la Sublime-Porte, S. M. l'Empereur de toutes les Russies, dans le cas où les circonstances qui pourraient déterminer de nouveau la Sublime Porte à réclamer l'assistance morale et militaire de la Russie viendraient à se présenter, quoique ce cas ne soit nullement à prévoir, s'il plaît à Dieu, promet de fournir par terre et par mer, autant de troupes et de forces que les deux parties contractantes jugeraient nécessaire.

§ 193. *Quos ego* is not, properly speaking, a diplomatic phrase, but it is often found in French books in the sense of “threat.” After the shipwreck narrated in Book I of the *Æneid*, Neptune summons the winds which had worked the mischief and addresses them in these words—

Tantane vos generis tenuit fiducia vestri ?  
Iam caelum terramque meo sine numine, Venti,  
Miscere, et tantas audetis tollere moles ?  
*Quos ego*—— !

<sup>1</sup> *Ibid.*, p. 260.

<sup>2</sup> *Ibid.*, p. 363.

<sup>3</sup> Guizot, *Mémoires*, iv. 341.

§ 194. There are certain French terms used in diplomacy for which it is not easy to find an exact rendering in English.

*Démarche* is defined by Littré as: "Ce qu'on fait pour la réussite de quelque chose," and one of the examples he gives is: "la démarche que l'Angleterre avait faite du côté de Rome." This "something" may have been what in English might be described as an offer, a suggestion, an advance, a demand, an attempt, a proposal, a protestation, a remonstrance, a request, an overture, a warning, a threat, a step, a measure—according to circumstances, and unless the translator happens to know what the circumstances were under which the *démarche* was made, he will be at a loss for a precise English equivalent.

"Il [Frederic II] donnait une première audience ce jour là à Sir John [Henry] Legge que le roi George, on l'a vu, s'était enfin décidé bien à regret, et après bien des hesitations, à lui envoyer. Bien que la démarche de l'oncle ne fut qu'à moitié cordiale, etc."<sup>1</sup>

Here *démarche* means the accrediting of an envoy.

In 1757 the Empress Elisabeth, being desirous that Louis XV should stand godfather to the child that the Grand-Duchess Catherine was expecting, charged Chevalier Douglas, who was about to return to France, to inform the King confidentially of her wish, and the chancellor mentioned the matter to the French ambassador l'Hôpital, requesting him to inform Cardinal Bernis beforehand.

"Le chancelier ne dissimula point que sa maîtresse attachait le plus grand prix au succès de la *démarche*."<sup>2</sup>

In the sense of an official request for information—

<sup>1</sup> Duc de Broglie, *La Paix d'Aix-la-Chapelle*, 234.

<sup>2</sup> Vandal, *Louis XV et Elizabeth de Russie*, 334.

“ Les ministres de Bavière, de Danemark, de Sardaigne commencent à murmurer, et on nous a dit qu'ils se concertaient pour faire envers les grandes puissances une *démarche* tendant à demander si le Congrès était formé, et où il devait s'assembler. C'est nous qui avons insinué cette idée, et nous espérons que la *démarche* aura lieu si les puissances tardent trop à s'expliquer.”<sup>1</sup>

Talleyrand, writing to Louis XVIII, November 30, 1814, reports that—

“ Les affaires de Pologne et de Saxe sont toujours dans la même situation ; la démarche que M. de Metternich avait fait faire par M. de Hardenberg, et que Lord Castlereagh n'a point approuvée, ayant été sans résultat, aussi bien que la discussion de Lord Castlereagh avec l'empereur Alexandre.”

In order to understand this statement it is necessary to refer to a letter of November 24, which states that—

“ Lord Castlereagh ayant échoué, ils ont voulu mettre de nouveau en scène le prince de Hardenberg. Mais il ne put voir, ni avant-hier ni hier, l'empereur Alexandre, qui, quoique beaucoup mieux, garde encore la chambre, et je ne crois pas qu'il l'ait vu aujourd'hui.”<sup>2</sup>

The *démarche* was an endeavour to persuade the Emperor Alexander to give up his plan of a kingdom of Poland, united with Russia by a personal union, and the annexation of Saxony to Prussia as compensation for the Prussian-Polish territory which he would take for that purpose.

Guizot, addressing the French diplomatic agent at Madrid, in March 1834, informed him that—

“ Le Roi a jugé convenable de vous prescrire, dans les circonstances actuelles, une démarche directe auprès de la reine Christine.”

This *démarche* consisted in showing to her a despatch composed for the purpose, and also placing before her

<sup>1</sup> *Mém. du Pr. Talleyrand*, ii. 333.

<sup>2</sup> *Ibid.*, 491, 499.

*vivâ voce* certain observations and offering advice confidentially, which were transmitted to the agent in a confidential despatch.<sup>1</sup>

“ Dès qu’il fut convenu qu’un congrès se réunirait dans ce but à Verone, M. de Chateaubriand fit de vives démarches, directes et indirectes, pour y être envoyé.” What was the form of these *vives démarches* the author of these memoirs does not tell us. Probably they consisted of suggestions made personally to Villèle, the prime minister, and indirectly to the King through Chateaubriand’s friends. Perhaps “ set every wheel in motion ” would convey the sense.

§ 195. *Fin de non-recevoir* is originally a legal term. Littré explains *fin* or *fins* as

“ toute espèce de demande, prétention ou exception présentée au tribunal par les parties. *Fin de non recevoir*, refus d’admettre une action judiciaire, en prétendant, par un motif pris en dehors de la demande elle-même et de son mal-fondé, que celui qui veut l’intenter n’est pas recevable dans sa demande.<sup>2</sup> Dans le langage général, *fin de non-recevoir*, refus pour des raisons extrinsèques. Répondre par des *fins de non recevoir*. Opposer des *fins de non-recevoir*.”

Cussy—

“ Cette locution, en usage dans les tribunaux, signifie les exceptions diverses qui forment autant d’obstacles à ce que le juge saisi d’une instance puisse s’occuper, au moins immédiatement, de la connaissance et de l’appréciation de la demande ; c’est un moyen de droit *préjudiciel*, par lequel on repousse une action, sans qu’il soit nécessaire d’examiner le fond de la contestation.”<sup>3</sup>

This latter explanation corresponds better to the notion conveyed when the expression is used to describe the diplomatic practice which consists in rejecting an official complaint or demand without examining into

*Mém.*, iv. 408.

<sup>2</sup> The English legal equivalent, in equity, is “ demurrer ” ; at Common law, “ plea in bar.”

<sup>3</sup> *Dict. du diplomate*, etc., s.v., 323.

the merits. At Tilsit Napoleon talked to Alexander I about the future of Turkey in Europe, tempting Russian cupidity and yet avoiding any definite promise ; nevertheless, as Vandal says, Alexander remained under the impression that—

“ loin d'opposer aux convoitises de Russie une fin de non-recevoir, Napoleon les encourageait à se produire, à s'affirmer, leur annonçant sous peu une satisfaction quelconque.”<sup>1</sup>

Again—

“ Les assauts réitérés du général Andréossy n'ont pu arracher à M. de Stadion une réponse favorable ; après s'être longtemps retranché derrière des formules dilatoires, le ministre a fini par déclarer, en évitant soigneusement le mot de reconnaissance, ‘ que les relations politiques entre les cours respectives seraient rétablies lorsque les deux rois [d'Espagne et de Naples, *i.e.*, Joseph Bonaparte à Madrid et Murat à Naples] seraient arrivés dans leur capitale et auraient notifié leur avènement’ ; c'est une fin de non-recevoir prononcée sous la forme la plus blessante, puisque l'Autriche subordonne sa conduite aux événements et méconnaît le droit de souverains créés par Napoléon pour ne s'incliner devant le fait.”<sup>2</sup>

“ Evasive reply ” is the best rendering here.

§ 196. *Prendre Acte. Donner Acte.*

The legal definition of *acte* is “ a declaration made before a court, whether spontaneously or in consequence of an order of a court, and which has been certified to have been made.” In diplomacy it is applied to any document recording an international agreement by which an obligation is undertaken ; such as, for instance, the convention for the suspension of hostilities of April 23, 1814, signed between France and the four allied Great Powers.<sup>3</sup> “ Instrument ” is the proper English equivalent, though we sometimes find it rendered by “ Act.”

<sup>1</sup> *Nap. et Alex. I.*, i. 78.

<sup>2</sup> *Ibid.*, 429.

<sup>3</sup> *Mém. du Pr. de Talleyrand*, ii. 175, in the preamble.



*Prendre acte* is to declare that one will avail one's self, should the necessity arise, of a declaration or admission made by the other party, without conceding that one is in any way bound by that declaration. "To take note of" is perhaps the English equivalent. Yet it may sometimes conveniently be rendered by "recognize" or "acknowledge."

"Mais les sagesses tardives ne suffisent point ; et même quand elles veulent être prudentes, l'esprit politique manque aux nations qui ne sont pas exercées à faire elles-mêmes leur affaires et leur destinée. Dans le déplorable état où l'entreprise d'un égoïsme héroïque et chimérique avait jeté la France, il n'y avait évidemment qu'une conduite à tenir : reconnaître Louis XVIII, prendre acte de ses dispositions libérales et se concerter avec lui pour traiter avec les étrangers."<sup>1</sup>

*Donner acte* is to give recognition to another party that he has performed a certain necessary act.

§ 197. *Donner la main* (in English, give the hand, German *Oberhand*) means to give the seat of honour, *i.e.* on the right hand of the host or diplomatic agent receiving a visit from a person of lower rank. The Elector Max Joseph of Bavaria was reported in 1765 to have bestowed this mark of deference on the Imperial Ambassador "which certainly no crowned head in Europe would do."<sup>2</sup> In the instructions to Lord Gower, on his appointment as ambassador to Paris in 1790, he is directed to act in accordance with the Order in Council of August 26, 1668, and "to take the hand of envoys" in his own house, *i.e.* to place them on his left hand. See also on this point § 383.<sup>3</sup>

§ 198. *Dénoncer un traité* is to give notice of intention to terminate a treaty, to the other contracting party or parties. "Denounce a treaty" is not good English.

<sup>1</sup> Guizot, *Mém.*, etc., i. 95.

<sup>2</sup> H. Temperly, *Fred. the Great and Kaiser Joseph*, 67.

<sup>3</sup> O. Browning, *The Despp. of Earl Gower*, 2.

§ 199. *National*. This French term, of which the convenience must be admitted, corresponds in English to "subject or citizen." We sometimes find it simply adopted as an English word, but surely it is not desirable to introduce neologisms into our own language which are understood only by the initiated. A similar observation applies to "*ressortissants*," one who is subject to a particular jurisdiction, which comprises both citizens of the French republic and persons under its protection, whether as subjects of a protected state, such as Tunis, or the natives of Morocco, who, in accordance with treaty stipulations that formerly existed with that country, were entitled to French protection as being brokers or *semsars* and *mokhalata* or employés of French commercial houses.

## BOOK II

### DIPLOMATIC AGENTS

#### CHAPTER XI

##### OF DIPLOMATIC AGENTS IN GENERAL

§ 200. Sir Henry Wotton's witticism—§ 201. His advice to Milton—  
§ 202. Izaak Walton's anecdote of Wotton—§ 203. Various  
opinions concerning diplomatists, by Massinger, Frederick the  
Great, Lady Mary Wortley Montagu, Torci, La Bruyère, Louis  
XI, E. Ollivier, Guizot, Brewer—§ 204. De Martens on diplo-  
matists—§ 205. Diplomatic agent or public minister—§ 206. His  
duties.

§ 200. A WELL-KNOWN witticism of Sir Henry Wotton's  
has been made use of by ill-natured persons as the  
foundation of a charge that the method principally  
employed by diplomatists is the perversion of truth.  
Izaak Walton, in the life prefixed to the *Reliquiæ  
Wottonianæ*, reports—

“ At his first going ambassador into *Italy*, as he passed  
through Germany, he stayed some days at *Augusta* [Augs-  
burg], where having been in his former Travels, well-known  
by many of the best note for Learning and Ingeniousness  
(those that are esteemed the *Vertuosi* of that Nation) with  
whom he passing an Evening in Merriments, was requested  
by *Christopher Flecamore*<sup>1</sup> to write some Sentence in his *Albo*  
(a Book of white Paper, which for that purpose many of the  
*German* Gentry usually carry about them) and Sir *Henry  
Wotton* consenting to the motion, took an occasion from some  
accidental discourse of the present Company, to write a  
pleasant definition of an Ambassadour, in these very words :

<sup>1</sup> John Christopher Flechammer or Fleckammer. See Logan  
Pearsall-Smith, i. 49 n., 127 n. ; ii. 10. Also an article by E. Nys in  
*Révue de Droit International*, xxi. 388.

*"Legatus est vir bonus peregrè missus ad mentiendum Reipublicæ causâ."*

"Which Sir Henry Wotton could have been content should have been thus Englished :

*"An Ambassador is an honest man, sent to lie abroad for the good of his Country."*

"But the word for *lye* (being the hinge upon which the Conceit was to turn) was not so expressed in Latine, as would admit (in the hands of an Enemy especially) so fair a construction as Sir Henry thought in *English*. Yet as it was, it slept quietly among other Sentences in this *Albo*, almost *eight years*, till by accident it fell into the hands of *Jasper Scioppius*, a Romanist, a man of a restless spirit, and a malicious Pen : who with Books against King *James*, Prints this as a Principle of that Religion professed by the King, and his Ambassadors Sir Henry Wotton, then at *Venice* : and in *Venice* it was presently written after in several Glass-windows, and spitefully declared to be Sir Henry Wotton's.

"This coming to the knowledge of King *James*, he apprehended it to be such an oversight, such a weakness, or worse in Sir Henry Wotton as caused the King to express much wrath against him : and this caused Sir Henry Wotton to write two Apologies, one to *Velserus* (one of the Chiefs of *Augusta*) in the universal Language, which he caused to be Printed, and given, and scattered in the most remarkable places both of *Germany* and *Italy*, as an Antidote against the venomous [*sic*] Books of Scioppius ; and another Apology to King *James* : which were both so ingenious, so clear, and so choicely Eloquent, that his Majesty (who was a pure judge of it) could not forbear, at the receipt thereof, to declare publicly, *That Sir Henry Wotton had commuted sufficiently for a greater offence*" [4th edit. 1685].

"In the letter to Mark Welser, Wotton calls his "pleasant definition"

*"iocosam Legati definitionem, quam iam ante octennium istâc transiens apud amicum virum Christophorum Fleckamerum fortè posueram in Albo Amicorum more Teutonico, his ipsis verbis ; 'Legatus est vir bonus, peregrè missus ad mentiendum reipublicæ causâ.' Definitio adeò fortasse catholica, ut complecti possit etiam Legatos à latere."*<sup>1</sup>

This seems a sufficient exoneration as far as Sir Henry Wotton is concerned.

<sup>1</sup> L. P. Smith, ii. 9, and *Reliq. Wotton*, 4th edit.

§ 201. Wotton, in a letter to Milton of April 13, 1638, giving him some suggestions for his intended journey into Italy, tells him the story that when he was at Siena, preparing to set out for Rome, an old Roman courtier, with whom he had lodged, gave him the following piece of advice: "Signor Arrigo mio, I Pensieri stretti, il viso sciolto will go safely over the whole world. Of which *Delphian Oracle* (for so I have found it) your judgment doth need no Commentary."<sup>1</sup>

§ 202. Sir Henry Wotton's views on the utility of the truth may be collected from the following anecdote told of him by Izaak Walton—

"A Friend of Sir *Henry Wotton's*, being designed for the employment of an *Ambassador*, came to *Eaton*, and requested from him some experimental Rules for his Prudent and Safe Carriage in his negotiations; to whom he smilingly gave this for an infallible *Aphorism*, *That, to be in safety himself, and serviceable to his Countrey, he should always, and upon all occasions speak the truth (it seems a State-Paradox) for, says Sir Henry Wotton, you shall never be believed; and by this means, your truth will secure yourself, if you shall ever be called to any account; and 'twill also put your Adversaries (who will still hunt counter) to a loss in all their disquisitions and undertakings.*"<sup>2</sup>

§ 203. As an illustration of the common opinion of the character of diplomatists in that age, Mr. Pearsall-Smith quotes from Massinger's *Renegado* [1624] the lines spoken by Gazet—

"I am bound there,  
To swear for my master's profit, as securely  
As your intelligencer must for his prince,  
That sends him forth an honourable spy,  
To serve his purposes."

Frederick the Great, much later, somewhere calls ambassadors, "Les moins honorables des espions."

<sup>1</sup> *Reliq. Wotton*, 4th edit. 343.

<sup>2</sup> *The Life of Sir Henry Wotton*, in *Reliq. Wotton*, p. d 4.

Lady Mary Wortley Montagu (1689-1762) is the authority, perhaps not a very trustworthy one, for the similar story of Earl Stanhope (1673-1721). Her account is—

“ I can truly affirm, I never deceived anybody in my life, excepting (which I confess has often happened undesignedly) by speaking plainly; as Earl Stanhope used to say (during his ministry) he always imposed on the foreign ministers by telling them the naked truth, which, as they thought impossible to come from the mouth of a statesman, they never failed to write informations to their respective courts directly contrary to the assurances he gave them: most people confounding the ideas of sense and cunning, though there are really no two things in nature more opposite.”<sup>1</sup>

“ Fearless truthfulness was one of his (Palmerston’s) distinctive characteristics, which, while it made him some enemies, in the long run won him more friends. In his intercourse with foreign Ministers, however, it sometimes served a purpose which he at the time little anticipated. I have heard him say that he occasionally found that they had been deceived by the open manner in which he told them the truth. When he laid before them the exact state of the case, and announced his own intentions, they went away convinced that so skilful and experienced a diplomatist could not possibly be so frank as he appeared, and imagining some deep design in his words, acted on their own ideas of what he really meant, and so misled themselves,” (Evelyn Ashley, ii. 301.)

“ Bismarck often acted on Palmerston’s dictum: ‘ I tell ambassadors the truth, because I know they won’t believe it.’ ” (*Bismarck*, by C. G. Robertson, 151.)

Flassan tells the same story of the celebrated French statesman Torci, whom Sorel describes as “ Un des hommes les plus honnêtes qui aient jamais été aux affaires,” that he said

“ Que le meilleur moyen de tromper les cours c’était d’y parler toujours vrai.”<sup>2</sup>

La Bruyère, in his portrait of the diplomatist, remarks—

<sup>1</sup> *Letters and Works*, new edition, 1887, ii. 240.

<sup>2</sup> *Hist. Génér. des Traités de Paix*, iv. 412.



" Toutes ses vues, toutes ses maximes, tous les raffinements de sa politique tendent à une seule fin, qui est de n'être point trompé, et de tromper les autres. Il est profond et dissimulé, pour cacher une vérité en l'annonçant, parce qu'il lui importe qu'il l'ait dite, et qu'elle ne soit pas crue ; ou il est franc et ouvert, afin que, lorsqu'il dissimule ce qui ne doit pas être su, l'on croie néanmoins qu'on n'ignore rien de ce que l'on veut savoir, et que l'on se persuade qu'il a tout dit." <sup>1</sup>

Louis XI, when sending du Bouchage and de Solliers to the Dukes of Guyenne and Bretagne, is said to have instructed his envoys : " S'ils vous mentent, mentez-les encore plus," <sup>2</sup> and we are told of a Spanish ambassador who, on starting for his post, gave out : " s'ils mentent, je leur mentirai deux cent fois plus." But that was long ago. The late Émile Ollivier, who had no lofty idea of the intelligence, judgment and good sense of diplomats in general, does not go farther than to say that " croyant être malins, ils sont bien souvent dupes." <sup>3</sup> Guizot had a better opinion of the profession—

" Les diplomates de profession forment, dans la société européenne, une société à part, qui a ses maximes, ses mœurs, ses lumières, ses désirs propres, et qui conserve, au milieu des dissentiments ou même des conflits des États qu'elle représente, une tranquille et permanente unité. Les intérêts des nations sont là en présence, mais non leurs préjugés ou leurs passions du moment ; et il peut arriver que l'intérêt général de la grande société européenne soit, dans ce petit monde diplomatique, assez clairement reconnu et assez fortement senti pour triompher de toutes les dissidences, et faire sincèrement poursuivre le succès d'une même politique par des hommes qui ont longtemps soutenu des politiques très-diverses, mais ne se sont jamais brouillés entre eux, et ont presque toujours vécu ensemble, dans la même atmosphère et au même niveau de l'horizon" (*Mem.*, ii. 266).

In the reign of Henry VIII English diplomatic agents already

<sup>1</sup> Quoted by Sorel, *l'Europe et La République française*, i. 21-2.

<sup>2</sup> Nys in *Rév. de Droit Diplom.*, t. xxi. 388 ; Flassan, ii. 247.

<sup>3</sup> E. Ollivier, *Empire Liberal*, iii. 119.

"began to display the peculiar temper and genius of the nation. Plodding and cautious, not easily susceptible of emotion, they look with apparent stolidity, real or assumed, on what is before them. Inferior in statecraft to the Frenchman or the Spaniard, the veteran diplomatists of Europe thought it scarcely worth while to deceive such inexperienced negotiators. It was no credit to assume the mask before men who had never sounded the turbid depths of political intrigue. Everywhere on the Continent the notion prevailed that England was wealthy and easily duped. . . ."<sup>1</sup>

"Le caractère national établissait parmi les diplomates des distinctions typiques. A l'Allemand, on reprochait la morgue ; le diplomate Italien était perfide et dangereux ; l'agent Bourguignon passait pour très intelligent, le Français n'avait pas toujours réputation d'habileté, mais il était honnête. . . . Le ministre espagnol était impénétrable, mais la diplomatie espagnole avait comme marque distinctive la lenteur. Sous Philippe II surtout apparaît ce reproche. ' Dans cette cour,' écrit quelqu'un de la suite du nonce extraordinaire que Clément VIII envoie auprès du roi d'Espagne en 1594, 'on ne tient nul compte du temps ; la moindre affaire exige des années pour être conclue.' "<sup>2</sup>

"Humboldt said that it was generally understood that the British government made a point of sending out none but fools of gentlemanly birth as diplomatists to foreign courts. In the sixteenth and seventeenth centuries almost all English ambassadors were distinguished men. The sure way to make a foolish ambassador is to bring him up to the profession. Your art diplomatic is stuff." (S. T. Coleridge, *Tabletalk*, August 28, 1822.)

The experienced modern diplomatist will be able to judge for himself how far the national types here drawn have persisted to our own day.

§ 204. De Martens says—<sup>3</sup>

"Pour que l'agent diplomatique inspire la confiance si nécessaire au succès des affaires, il faut que, sans abandon affecté, son caractère fasse croire à sa franchise. Le soupçon

<sup>1</sup> Brewer, i. pref. xx.    <sup>2</sup> Nys, 324.    <sup>3</sup> *Guide Dipl.*, 152 (edit. of 1866.)

de finesse provoque la méfiance, et la marche des affaires en souffre. Mais la loyauté n'exclut pas la prudence, et l'on peut répudier la ruse sans renoncer à la circonspection."

Die Arbeit des Diplomaten, seine Aufgabe, besteht in dem praktischen Verkehr mit Menschen, in der richtigen Beurtheilung von dem was andere Leute unter gewissen Umständen wahrscheinlich thun werden, in der richtigen Erkennung der Absichten anderer, in der richtigen Darstellung der seinigen. (*Bismarck*, quoted by Price Collier, in *Germany and the Germans*, p. 452.)

Lord Clarendon sich im Gegentheil schmeichelte, etwas kluges gethan zu haben, wie die meisten Diplomaten Ruhm darin finden, wenn sie über eine Schwierigkeit dadurch hinüberkommen, dass sie die Entscheidung auf eine plausible weise vertagen. (Geffcken, *Zur Geschichte des Orientalischen Krieges*, p. 244, with reference to the discussion at the Congress of Paris, 1856, respecting the proposed union of Moldavia and Wallachia).

"La Diplomatie française, qui attirera surtout notre attention, n'est certainement pas la plus habile. Si l'envoyé n'a pas, en général, la morgue qu'on reproche à l'Allemand ou la rudesse apparente de l'envoyé anglais, on ne saurait non plus lui attribuer la souplesse, l'esprit avisé des Italiens. C'est un honnête homme, qui ne voit que l'objet de sa mission, qui se soucie médiocrement du pays où il se trouve et y vit isolé, il va droit devant lui, correspond peu avec son gouvernement, parle haut, bref, avec bonne foi, mais sans grands ménagements ; on sent assez souvent percer dans ses paroles comme la pointe d'un sabre." Mauldé-la-Clavière, *Hist. de Louis XII*, 2<sup>ème</sup> partie, I, 1<sup>er</sup>, p. 7.

On Downing, sent to the Hague in 1654—

"Ne se fiant qu'à la fourbérie dont il se faisait gloire et qui ne lui rapportait pas grands profits, il n'avait pas assez de probité ni de prudence pour se persuader qu'il n'y a pas de ministre qui trompe plus sûrement ni plus agréablement que celui qui ne trompe jamais." Wicquefort, *L'Ambassadeur et ses fonctions*, 202.

§ 205. *Diplomatic agents* is a general term denoting the persons who carry on the political relations of the states which they represent, in conjunction with the

minister for Foreign Affairs of the country where they are appointed to reside. They are also styled "ministres publics" in French.<sup>1</sup> It is not meant that their official intercourse is limited to the head of the foreign department. Matters which come under the heading of current business, or the details of diplomatic negotiations, of which the principles have already been settled, may be and usually are discussed with one of the minister's immediate subordinates, such as in England are denominated under-secretaries of State. Questions affecting the vital relations of the two nations will, however, be treated with the head of the office. A parliamentary under-secretary is not, as a rule, charged with the direction of office business. His function is to assist in the representation of the Office in the legislature, to answer questions and afford explanations of the course adopted with respect to particular matters of policy.

§ 206. The duty of the diplomatic agent is to watch over the maintenance of good relations, to protect the interests of his countrymen, and to report to his Government on all matters of real importance, without being always charged with the conduct of a specific negotiation. At the more important posts, the agent is assisted in furnishing reports of a special character by military, naval and commercial attachés.

In addition to the head of the permanent mission, other agents are sometimes deputed for special purposes of a ceremonial character, to represent the Sovereign at a coronation, a royal wedding or funeral, or to invest the foreign Sovereign with a high decoration. It is usual also to appoint special agents for particular objects, such as the negotiation of commercial treaties, in which cases the permanent representative is often joined with the business expert, or to attend conferences on postal

<sup>1</sup> "Ministère public" in French means the procureurs-généraux (public prosecutors). The law-officers of the Crown in England would probably be regarded as being included in this category.

and telegraph conventions, questions of hygiene, the protection of literary and artistic property, trade marks and patents. Commissioners may also be appointed to regulate boundary questions, or other matters requiring adjustment which are outside the scope of the ordinary duties of the permanent diplomatic representative. These persons do not enjoy all the privileges and immunities of diplomatic agents, described further on, in Chapter XVI.

## CHAPTER XII

### THE RIGHT OF LEGATION

[Fr. Droit de légation, ou d'ambassade, actif et passif ; Ger. Gesandtschaftsrecht, actives und passives, *i.e.*, the right to send and the right to receive diplomatic agents.]

§ 207. Right of every independent state—§ 208. Semi-independent states—§ 209. Who has the right in each state—§ 210. Right of a regent—§ 211. Of a monarch who is prisoner-of-war—§ 212. In civil war or revolution—§ 213. Delegatus non potest delegare—§ 214. Right of the Holy See—§ 215. Only one diplomatic agent usual—§ 216. In war-time, agent of friendly neutral protects subjects of other belligerent—§ 217. May be accredited to more than one country—§ 218. Determination of the class of agent to be sent. § 219. What states may appoint ambassadors—§ 220. Continuous residence of agent not a matter of strict right.

§ 207. EVERY recognized independent state is held to be entitled to send diplomatic agents to represent its interests in other states, and reciprocally to receive such agents, but there is no obligation in international law to exercise either right. In treaties with some Oriental states the right to have a diplomatic representative has been expressly stipulated, as with China, for instance, and formerly with Japan. This practice is, however, not exclusively modern. In 1614 it was provided by a treaty between Sweden and Holland that the two states should mutually accredit resident envoys. Holland had a similar agreement, also of 1614, with Brandenburg, Anhalt, Baden, Oettingen and Württemberg.

The Treaty of Belgrade, 1739, between Russia and the Porte, provided that the former might have a resident minister at Constantinople, of whatever category the Russian sovereign might determine ; and by Article V of the Treaty of Kutchuk-Kainardji, 1774 (January 10,



1775), it was settled that the Russian representative should always be of the second class, taking rank immediately after the Imperial German minister; but if the latter were of a higher or lower category, then the Russian to have precedence immediately after the Dutch, or in his absence, after the Venetian ambassador.<sup>1</sup> Great Britain, up to December 1914, maintained no regular diplomatic intercourse with the Holy See; formerly, before the annexation of Rome to the Kingdom of Italy, a secretary of the British legation at Florence usually resided at Rome as the unofficial medium of official communication. Prussia had a legation at Rome, while not receiving a *nuncio* at Berlin; so also Russia.

§ 208. Whether semi-sovereign states possess the right or not is determined by the form of the tie between them and the suzerain power, sometimes by treaty. The right to send diplomatic agents is not co-extensive with that of concluding treaties. Thus Egypt, as long as the Turkish suzerainty lasted, was able to conclude commercial treaties with foreign states, but was not empowered to maintain permanent missions.

§ 209. In monarchical states the sovereign has the right of making appointments. Generally speaking, this right is defined by the constitution. Thus, in the French Republic it is exercised by the President, in the United States by the President in conjunction with the Senate, whose consent is necessary to the nominations sent to it by the former.

§ 210. In the case of a regency, the diplomatic agent is nevertheless accredited in the name of the sovereign, whether he be a minor or be prevented by infirmity from discharging his functions. Thus, during the minority of Louis XV, the Duke of Orleans being regent, Cardinal Dubois negotiated the Triple Alliance of the Hague

<sup>1</sup> Koch and Schoell, xiv.

in 1717, in virtue of credentials, full-powers and instructions made out in the name of the King. In England, during the periods when George III was incapacitated by mental derangement for the transaction of affairs, the right of sending embassies was vested in the Prince of Wales. The Republic of Poland, during a vacancy of the elective throne, exercised the right of embassy.<sup>1</sup>

§ 211. A monarch who is a prisoner-of-war cannot accredit diplomatic agents.<sup>2</sup>

§ 212. When a civil war or a revolution breaks out, agents despatched to foreign countries by the opponents of the hitherto constituted Government ought not to be officially received until the new state of things has assumed a permanent character and given rise to the formation of a new *de facto* Government. The fact that a party in a state, during a civil war, has been recognized as a belligerent, conveys no right to be diplomatically represented abroad. But foreign States may negotiate with the agents of such a belligerent informally, to provide for the safety of their subjects and of the property of their subjects resident within the territory under the sway of such a party.<sup>3</sup> During the continuation of a civil war or revolution the diplomatist on the spot may often have to intervene on behalf of his own countrymen with the insurgents in possession, but he will do this personally and unofficially until his Government recognizes the new power which has been set up, and sends him new credentials. As long as its recognition does not take place, the diplomatic agent previously accredited continues to represent the Head of the State which appointed him. In 1861, Great Britain, having recognized the Kingdom of Italy, which had annexed the Neapolitan dominions, intimated to the *Chargé d'affaires* of Naples that he could no longer be accredited as a representative of the King of the Two Sicilies.<sup>4</sup> In 1871

<sup>1</sup> Phillimore, ii. 141.

<sup>2</sup> G. F. de Martens, *Précis du droit des gens*, ii. 40.

<sup>3</sup> Oppenheim, 2nd edit. i. § 362. <sup>4</sup> de Martens-Geffcken, i. 39.

Count Bismarck insisted that, in order that the Government of the National Defence should be recognized as having the right to represent France diplomatically, it must be recognized by the French nation. The right may sometimes be doubtful or disputed, *e.g.* when a sovereign has assumed a title which is not as yet recognized by other Powers. On the occasion of the coronation of King William I, Prussia not having recognized the Kingdom of Italy, it was doubtful whether the King of Italy could send an ambassador to attend the ceremony. The difficulty was overcome by appointing General de la Rocca ambassador of King Victor Emmanuel, without specifying the country of which he was King.

§ 213. The maxim *delegatus non potest delegare* was formerly subject to certain exceptions. Thus, after the death of Gustavus Adolphus at Lützen in 1632 the Senate at Stockholm delegated the whole government to the Chancellor Oxenstierna. Grotius, nominated by him as ambassador to France, had credentials in the Chancellor's name. He was received as the ambassador of Sweden, and not of the Chancellor who had appointed him, and in virtue of the procuration of the Senate.

During the period when Spain governed Naples by a viceroy, Milan by a governor, and the Spanish Netherlands by a governor-general, the right to appoint was frequently exercised by these high delegates of their sovereign, generally without controversy. But in 1646 the French ambassador in Switzerland persuaded the Cantons to refuse an audience at their general assembly to the ambassador of the governor of Milan, on the ground that this ambassador had no credentials from the Crown of Spain. During the time that the Netherlands (now Belgium) were a possession of the House of Austria, foreign diplomatic agents were sent to reside at Brussels, the seat of the governor-general's authority.

The British governor-general of India, the Dutch governor of Java, and formerly the Spanish governor of

the Philippines are other examples. The Dutch, French, and British East India Companies often possessed this power, but this cannot be presumed ; it must have been conferred by the special and express grant of their respective Governments.<sup>1</sup>

§ 214. The right of the Holy See to diplomatic representation has not been affected by the annexation of the States of the Church to the Kingdom of Italy.

§ 215. It is the general practice to have only one permanent diplomatic agent at each capital. When more than one are deputed to a Conference or to a Congress, one of the number is usually designated as the First Plenipotentiary.

§ 216. In time of war the representative of a neutral friendly Power commonly undertakes the protection of the subjects of one belligerent in the dominions of the other belligerent, so far as is permitted by the State to which he is accredited, and, of course, with the sanction of his own Government.

§ 217. There is no objection in principle to one and the same person being accredited to more than one country. Indeed, this is often done where several minor states lie adjacent to each other, or when it is desired for reasons of public economy to limit expenditure on diplomatic missions.

§ 218. What class of agents shall be accredited is a matter for arrangement between the governments concerned, the usual practice being to exchange agents of the same class. France, however, appoints an Ambassador to Berne, while the Swiss Confederation sends an Envoy and Minister to Paris. Generally, however, only the Great Powers are represented by Ambassadors, though up to 1893 the United States made it a rule to appoint agents of not higher rank than Envoy and Minister. At the beginning of Queen Victoria's reign Great Britain had Ambassadors at Paris, Petersburg

<sup>1</sup> Phillimore, ii. 142-3.

and Constantinople, but from 1844 to 1860 the post at Petersburg was occupied by an Envoy and Minister. The legation at Vienna was raised to an embassy in 1860, that at Berlin in 1862, at Rome in 1876, at Madrid in 1887, at Washington in 1893, and at Tokio in 1905. In all these cases the change of status has taken place by mutual consent, and the head of the legation has, as a matter of usual practice, been promoted to be Ambassador. Similar changes have taken place all over the world during the last century, *Chargés d'affaires* being converted into Ministers resident, and Ministers resident into Envoys Extraordinary and Ministers Plenipotentiary, as a mere matter of international compliment and in recognition of the growing importance of the political and commercial relations of states.

§ 219. It is sometimes said that only states of which the Heads are entitled to "Royal honours" have the right of sending ambassadors. On the other hand, the enumeration of royal honours is stated to include "the right of nominating public ministers of the first class to diplomatic missions,"<sup>1</sup> so that the former statement has the appearance of arguing in a circle.

§ 220. The continuous residence of an embassy is, to speak strictly, a matter of *comity*, and not of *strict right*.

Nevertheless, so long a custom and so universal a consent have incorporated this permission of strict residence into the practice of nations, that the gross discourtesy of refusing it would require unanswerable reasons for its justification, and would place the refusing in so unfriendly an attitude towards the refused state as to be little removed from a condition of declared hostility.<sup>2</sup>

Such refusal was the ancient practice of Far Eastern nations towards European states up to about the middle of the nineteenth century, and in the case of Corea until 1883.

<sup>1</sup> de Martens-Geffcken, i. 199.

<sup>2</sup> Phillimore, ii. 154.

## CHAPTER XIII

### THE SELECTION OF DIPLOMATIC AGENTS

§ 221. Methods adopted in various countries—§ 222. Diplomats' wives—§ 233. British Royal Commission of 1914—§ 224. Qualifications desirable in a diplomatist—§ 225. Schmelzing's opinion—§ 226. Schmalz's opinion—§ 227. Age of diplomatists—§ 228. Callières on age.

§ 221. IN theory the selection of heads of missions will be determined with reference to the absolute fitness of the man for the particular post. (The qualifications and characteristics of the perfect diplomatist have been discussed in Chap. IX., see also p. 198.) Here it is only intended to describe different methods of selection adopted in different countries. Most European states confine diplomatic appointments, at least to ranks below that of ambassador, to a close service consisting of trained men who have begun at the lowest step of the ladder and risen gradually. In some the diplomatic service is amalgamated with that of the Foreign Office, and sometimes also with the higher ranks of the consular service. In Great Britain ambassadors are now usually taken from one of the two former, rarely, indeed, from the last; sometimes, but rarely, they have previously been politicians; formerly they belonged to the political party in power, and usually resigned on a change of government. The same combination of foreign office and diplomatic service appeared to exist in Austria-Hungary, France, Germany, Italy, Russia and Spain. In all of those countries the interchange of the office of Minister for Foreign Affairs with that of ambassador was not infrequent, but in Great Britain no instance of the kind has occurred, at least in recent times, doubtless



because of the strictness of party government. In 1754 Sir Thomas Robinson (afterwards Lord Grantham), who had been minister at Vienna, was made Secretary of State for the Southern Department and leader of the House of Commons, in which position he achieved no marked distinction. His son, the second Lord Grantham was ambassador at Madrid from 1771 to 1779, and Secretary of State for Foreign Affairs for a few months in 1782-3. The appointment of the fifth Duke of Leeds is scarcely a case in point, nor is that of George Canning, of Marquess Wellesley, nor of the second Earl Granville, all of whom were in real fact politicians. The fourth Earl of Clarendon had been envoy at Madrid from 1833 to 1839, but did not go to the Foreign Office till 1853. The first Earl of Kimberley was envoy at Petersburg under his earlier title of Lord Wodehouse from 1856 to 1858, but did not become Secretary of State till 1894. In the interval he had filled a variety of other offices.

In the United States diplomatic appointments to embassies and to missions of all classes are conferred almost without exception on political supporters of the party whose nominee has been elected President, and it is usual for them to send in their resignations as soon as a President is elected from the opposite side in politics.

In Japan there have been several instances of the interchange of minister for Foreign Affairs and ambassador.

§ 222. If the diplomatist suggested for appointment of ambassador or envoy is married, the social gifts, character, religion, past history, or original nationality of his wife may be an important ingredient in the determination of his appointment or rejection.

There have been cases, like that of the celebrated Mme. de Lieven, where the lady was the more important of the two heads of an embassy, and unofficially wielded far greater influence than her husband.

§ 223. In 1914 a British Royal Commission on the Civil Service presented a report containing a series of recommendations with respect to the organisation and recruitment of the diplomatic service.<sup>1</sup> One of these was that the Diplomatic establishment of the Foreign Office and the Diplomatic corps serving abroad should be amalgamated, up to and including the grades of assistant under-secretary of state and minister of the lowest grade. They proposed that the existing property qualification (the possession of a private income of £400 a year) be abolished, and that members of the service employed abroad should receive a suitable foreign allowance. The only part of their report of immediate interest in this place is that which deals with recruitment, and here they do not make any revolutionary proposals. Their recommendations have been accepted in principle, and the area of selection has been widened by the abolition of the property qualification, and by assimilating the examination for the Foreign Office and Diplomatic Service to the rest of the Civil Service, except that greater stress is laid on a knowledge of foreign languages, and in particular a really high standard of French is required.

§ 224. We should, in contrast with these Royal Commissioners, be disposed to say that some, if not all, of the following are necessary qualifications for the diplomatic career.

Good temper, good health and good looks. Rather more than average intelligence, though brilliant genius is not necessary. A straightforward character, devoid of selfish ambition. A mind trained by the study of the best literature, and by that of history. Capacity to judge of evidence. In short, the candidate must be *an educated gentleman*. These points cannot be ascertained by means of written examinations. Those can only afford evidence of knowledge already acquired; they do not

<sup>1</sup> [Cd. 7748.]

reveal the essential ingredients of a character. At some posts it is useful to have had a legal training, particularly where the minister for Foreign Affairs is pretty sure to be a lawyer.

Science is not necessary. Geography, beyond elementary notions, is not of great value. The diplomatist will acquire what geographical knowledge he needs of the country to which he is appointed while residing at his post. Few men can know it in sufficient detail beforehand. The writer has heard of a case where the experts of the Royal Geographical Society, on being applied to for information respecting the navigability of a river, gave a seriously misleading answer, and that, too, in spite of having on their shelves a scientific traveller's narrative from which they could have learnt the facts.

Some private income, even though the Government should give a special foreign service allowance, is very desirable in the lower grades of the diplomatic service, and the higher the grade the more of it the better.

§ 225. We take the following weighty observations on the qualifications requisite for a diplomatist or envoy from Schmelzing. They may seem to border on a description of the unattainable, but it is by aiming at the unattainable that the best obtainable is secured.<sup>1</sup>

Die zeitgemässe Leitung der auswärtigen Staatsverhältnisse ist für jegliches Volk von der grössten Wichtigkeit. Es kann demselben niemals gleichgültig seyn, welche Personen von dem zeitlichen Souverain zur Mitleitung ausersehen worden sind. Wenn auch die Wahl derselben immerhin grossen Schwierigkeiten unterworfen seyn wird, da öfters die individuellen Einsichten oder persönlichen Rücksichten des Regenten hierin einen grossen Spielraum haben, so fordern doch forthin Rechtlichkeit, wahrhafte Politik des zeitlichen Regenten und dessen Liebe für des Staates Wohl, dass er nur solchen Männern die Leitung der auswärtigen Verhältnisse unmittelbar oder mittelbar anvertraue, welche

<sup>1</sup> Schmelzing, ii. 110.

1. Die für eine so wichtige Stelle erforderlichen Kenntnisse oder wissenschaftliche Bildung erprobt haben. Hierunter ist Kenntniss der lebenden Sprachen, und sogar in manchen Fällen auch die Kenntniss einzelner todten Sprachen, keine der letzten Forderungen. Die Gabe des mündlichen und schriftlichen Vortrags muss hier gleichfalls nicht ausser Acht kommen.

2. Rechtlichkeit und Wahrheit seyen ein auszeichnendes Merkmal im Charakter solcher Personen, die sicherlich mehr durch diese erhabenen Eigenschaften, als durch Verstellung, falsche Künste und Betrug, für ihres Staates Wohl bewerkstelligen werden, sowie Treue gegen ihren Souverain und Liebe für ihr Vaterland sie stets auch beseelen möge.

3. Frei vom Ehrgeize und eitlen Prunke, mögen sie bei jeglicher ihrer Handlungen nur ihres Staates Wohl, und ohne alle Eigennützigkeit beabsichtigen.

4. Mit tiefer Menschenkenntniss, Umsicht, mit Freiheit von Vorurtheilen und Leidenschaften, mögen sie fürhin Besonnenheit, Ruhe und die Festigkeit eines edlen und reinen Willens verbinden.

5. Ihre rechtliche Wirksamkeit sey durch ununterbrochene Thätigkeit, durch einen klaren und schnellen Ueberblick, Geschäftsgewandtheit, und sorgfältige Wahl günstiger Zeitmomente, ausgezeichnet.

6. Um so besser, wenn sie dem empfehlenden Äussern der Person, ihrem gefälligen, anziehenden Benehmen, und ihrem edlen Anstande, auch ein tadelloses Betragen, glückliche Privatverhältnisse und erspriessliche Familienbeziehungen anschliessen.

§ 226. To the foregoing may be added some remarks of Schmalz—<sup>1</sup>

Die Kunst der Unterhandlung auf Regeln bringen, ist so eitel als thöricht, wie die Kunst des Umganges mit Menschen lehren zu wollen. Was den geschickten Unterhändler macht (ausser der Kenntniss der Geschäfte und der Vortheile seines Vaterlandes) als: Kenntniss der Menschen, welche in Mienen und Blicke zu lesen weiss, die eigene Haltung, welche hier den Schwachen durch Ernst, dort den Starken durch Sanftheit zu überwältigen geschickt ist, und die Leichtigkeit die Absichten Anderer zu begreifen, ihre Einwürfe gewandt zu widerlegen; das Alles sind Eigenschaften, welche nur die Natur, das Leben in der Welt, und Uebung in den Geschäften

<sup>1</sup> Cited by Schmelzing, ii. 105.

geben, aber niemals ein Buch durch Belehrung uns aneignen kann. . . . Der Mann den Wissenschaft und Welt gebildet, und den Geschäfte geübt haben, wird von innerer Rechtsschaffenheit auch besser geleitet werden, als der verdorbene Weltmann durch alle Schlaueit. Wer mit Treue gegen seinen Souverain und mit Liebe seines Vaterlandes Liebe der Menschen vereint, wer bei gründlichem Wissen nur das Rechte, Gute und Edle will, der wird sicher den Weg zu der wahren Krone des Verdienstes finden, die wahrlich nicht Anerkennung der Welt ist. Gelingen oder Verfehlen ist zufällig, und darnach urtheilt die Welt allein. Unbeholfene Menschen haben oft Geschäfte glücklich zu Stande gebracht, weil ihrer Gegner Schwäche oder Interesse ihnen entgegen kam; während Klugheit und Erfahrung der trefflichsten Staatsmänner ihres Ziels verfehlten. Nicht das Einzelne, was gelingt, oder mislingt, sondern der ganze Geist der Amtsführung macht den Werth des Staatsmanns; am Ende wird auch dieser von der Welt erkannt.

We have attempted the following rendering of these observations of Schmalz.

“ The attempt to reduce to rules the art of negotiating is as vain and futile as the attempt to teach the art of social intercourse. In addition to knowledge of affairs in general and comprehension of the interests of his own country in particular, the distinguishing characteristic of a successful negotiator, such as knowledge of men, which enables one to interpret looks and glances, an elasticity of demeanour which overcomes the weak man by earnestness and the strong man by gentleness, readiness to understand the opponent's point of view and skill in refuting his objections—all these are qualities which can be acquired only by natural disposition, social intercourse and practical acquaintance with affairs; but they can never be gained from book-learning. A man who has been educated by study, by mixing in society, and by the practice of affairs will be better guided by his own sense of honour than the corrupt man of the world by cunning. He who combines love of mankind with loyalty to his sovereign and love of his native country, who, with thorough knowledge,



aims solely at what is just, good and lofty, will assuredly find his way to the genuine crown of merit, which is not identical with public recognition. Success or failure is a matter of chance, and by them alone the world judges. Blunderers have often achieved success because they were aided by the weakness or egotism of their opponents, while the wisdom and experience of the greatest statesmen have missed their aim. The worth of a statesman is to be measured not by a single success or failure, but by the whole spirit of his administration ; and the world will recognize this worth in the long run."

§ 227. *Age of Heads of Missions.*

In the British diplomatic service the age of retirement is fixed at seventy years, but cases have occurred in which, for special reasons, it has been thought desirable to extend the period of service. The French rule is retirement at sixty-five years of age. Other states have no age limit. Count Nigra is reported to have said : " A diplomatist *begins* to be capable of rendering service to his country at the age of seventy-five."<sup>1</sup>

§ 228. The author of *De la Manière de negocier avec les Souverains*, who is frequently quoted in this book observes that

" un jeune Negociateur est d'ordinaire présomptueux, vain, léger & indiscret, & il y a du risque à le charger d'une affaire de consequence, à moins que ce ne soit un sujet d'un merite singulier & dont l'heureux naturel ait prévenu les dons de l'âge & de l'experience.

" Un vieillard est chagrin, difficultueux, trouvant à redire à tout, blâmant les plaisirs qu'il ne peut plus prendre, peu propre à s'insinuer dans les bonnes graces d'un Prince & de ses Ministres, & hors d'état d'agir par la lenteur & les incommoditez attachées à la vieillesse.

" L'âge mediocre est le plus propre aux negociations, parce qu'on y trouve l'experience, la discretion & la moderation qui manquent aux jeunes gens, & la vigueur, l'activité & l'agrément, qui abandonnent les vieillards."<sup>2</sup>

<sup>1</sup> Villa-Urrutia, ii. 143.

<sup>2</sup> Callières, 356.



## CHAPTER XIV

### PERSONA GRATA

§ 229. Right of refusing a diplomatic agent—§ 230. Submission of name for approval—§ 231. Instances of refusal—Stratford Canning case—§ 232. Keiley—§ 233. Blair—§ 234. United States practice—§ 235. Other cases—§ 236. Subject of the State to which he is accredited—§ 237. Pozzo di Borgo, Count de Bray, Count Rossi, Sir Patrick Lawless, Cardinal Hohenlohe—Wicquefort—§ 238. United States Law—Burlingame—Camacho.

§ 229. EVERY State has the right of refusing to accept a particular diplomatic agent, whether on the ground of his personal character or of his previous record, as, for instance, if he is known to have entertained sentiments of enmity towards the state to which it is proposed to accredit him. A diplomatic agent may be declined because of the character with which it is proposed to invest him, or, as it is tersely expressed in Latin *ex eo ob quod mittitur*. If the Pope were to announce his intention of sending a legate or *nuncio* to Great Britain, it is probable that such a representative would not be received. The Ottoman Porte for a long time declined to exchange Ambassadors with the United States, until the latter finally despatched a squadron of ships of war to Constantinople, and at the cannon's mouth, as it were, extracted a promise to fall in with the proposed arrangement.<sup>1</sup>

§ 230. *Agrégation*. To avoid unpleasantness arising from a refusal, it is the usual practice to submit the name of the person whom it is desired to appoint, beforehand, to the Head of the State to whom he is to be accredited. This is done confidentially and by word of

<sup>1</sup> J. W. Foster, *Diplomatic Practice*, 1906, 31.

mouth, though from the fact that forms of acceptance are to be found in books, it might be inferred that the matter is sometimes arranged by an interchange of letters. The channel generally employed is the retiring diplomatic agent of the Court which appoints, or more often the *Chargé d'affaires ad interim*. Sometimes it is done by the minister for Foreign Affairs addressing himself to the diplomatic representative of the Power to which the diplomatist is to be accredited. When the Pope is about to appoint a *nuncio* or legate to Spain (formerly also to the Courts of Austria-Hungary, France and Portugal) he submits a list of three names, called a *terna*, to the Sovereign, who then is at liberty to make his choice. If there exist no special reasons for exercising the power of choosing, it is usual to take the name that stands first. In 1819, Dessolles, the French Minister for Foreign Affairs, wrote to Nesselrode giving a list of four men, either of whom the King would be willing to appoint ambassador at Petersburg, recommending particularly the first on the list. Alexander, however, chose La Ferronnays, who was the second. (F. de Martens, *Recueil*, xiv, 415.)

It is a matter of dispute whether a refusal must be accompanied by a statement of the grounds on which it is made, but it can safely be asserted that if in such a case the reasons are asked for, and they are not given, or if it appears to the Government whose candidate has been refused that the grounds alleged are inadequate, that Powers may refuse to make an appointment, and prefer to leave its diplomatic representation in the hands of a *Chargé d'affaires*.

§ 231. The books give several instances of refusals, and others have occurred which have not been made public. One of the best known is that of the refusal of the Emperor Nicholas to receive Sir Stratford Canning, in 1832, as successor to Lord Heytesbury.

The Russian account of this case is that the nomination of Sir Stratford was made suddenly and without previous notice. It was only ten days after the appointment had been notified in the London *Gazette* that Palmerston mentioned it to Prince Lieven, the Russian ambassador, who remonstrated with him on the unusual character of this proceeding. Palmerston replied vehemently that a Government was perfectly free in the choice of its representatives at foreign Courts, and that the latter could not, without, so to speak, desiring to interfere in its councils, have any influence in the matter. He maintained that the refusal of the Emperor of Russia to receive Stratford Canning as British ambassador was equivalent to a veto imposed on a decision of the King of England. Two months later he declared that the nomination would not be cancelled, and that Stratford Canning would shortly betake himself to his post at Petersburg. Eventually Nesselrode instructed Lieven to declare categorically that Stratford Canning would not be received by the Emperor, and that if Palmerston persisted the Russian ambassador would have to quit his post and be replaced by a *Chargé d'affaires*. Already in 1831 Lord Durham had been nominated special ambassador to Petersburg without the Russian Government having been previously consulted. Lieven had known of this latter appointment only on the day it was signed by the King. He gave Palmerston a frank statement of his views on this subject but recommended his Government not to take any notice of this flagrant violation of established usage.<sup>1</sup>

In 1832, September 3, the Hon. J. D. Bligh had been transferred from the Hague, where since June 16 he had held the post of minister plenipotentiary *ad interim*

<sup>1</sup> F. de Martens, xii. 9-10. Durham wrote from Petersburg to Palmerston that Nesselrode wished Canning should not be sent, even before his name had been mentioned by Palmerston. S. J. Reid's *Life of Durham*, i. 315. This writer's statement, on p. 23c, that "it was only when the Tsar stated that he should decline to receive Canning, that Palmerston, with considerable ill grace, yielded," is not quite accurate.

(equivalent to *Chargé d'affaires*) to Petersburg in the same capacity. Stratford Canning's appointment was dated October 30, but as the Emperor refused to receive him he did not proceed. On December 30 of the same year he was sent on a special mission to Spain and Portugal. Lord Durham was appointed a second time July 5, 1835,<sup>1</sup> and ordinary relations were resumed.

Lieven, nevertheless, did not receive his recall till August 30, 1834. He had been appointed governor (*curateur*) of the Grand Duke Alexander on April 30. The story given in E. Daudet's *Une Ambassadrice*, is that Nesselrode entrusted to Mme. de Lieven the delicate task of informing Palmerston that Canning could not be accepted; he was "un homme impossible, pointilleux, défiant"; there were reasons to believe that he had been guilty of rudeness towards the Tsar, when the latter was still Grand-Duke; Palmerston promised her that Canning should not be appointed, but broke his word, and the Tsar threatened to recall his ambassador. Madame de Lieven rushed off to Petersburg, and conjured away the danger (p. 181). The lady, as is well known, was much more the representative of Russia than her husband.

Stanley Lane Poole, in a long account of this affair,<sup>2</sup> quotes Bligh's correspondence to show that the allegation of discourtesy towards the Emperor in 1825, before he ascended the throne, was without foundation, but states that Nicholas' objections were such as would place him under the disagreeable necessity of objecting to the nomination if it were pressed. Planta, a former Under-secretary for Foreign Affairs, in a letter to Canning, wrote—

"I cannot understand any foreign Power being allowed to take such a course as this, or that things should not be so managed by our Foreign Office as to prevent it. . . . I have often heard of soundings and confidential communications,

<sup>1</sup> F.O. List for 1869.

<sup>2</sup> *Life of the Rt. Hon. Stratford Canning*, ii. 18.

and inquiries "would this or that man be fitting," but then these always preceded the public declaration of an embassy, and its formal announcement in the *Gazette*."

In Canning's credentials to the King and Queen of Spain he was styled "Ambassador to the Emperor of all the Russias." While he was at Madrid Palmerston offered to appoint him permanent ambassador there, but he refused.

The probabilities are that Nicholas thought Canning knew too much about Turkish affairs and Russian policy in that country, and that this was the unavowed reason for the refusal; and that Palmerston was aware of this, but resolved to try to force Canning's appointment. Possibly, too, rumours of stormy interviews between him and John Quincy Adams, the American Secretary of State, during Canning's mission to the United States, may have reached Petersburg and rendered the Emperor unwilling to have such a diplomatist at his Court.<sup>1</sup>

At the present day the practice of making inquiry beforehand is recognized by most States as thoroughly well established, with one important exception.

§ 232. In 1885 Mr. A. M. Keiley was appointed United States minister at Rome. The Italian Government, on being apprised of the fact by their minister at Washington, at once requested that another choice might be made, without however assigning any reason. But it is evident that the ground of the refusal to receive him was a speech made by Mr. Keiley in 1871 at a public meeting of Roman Catholics, at which a protest was

<sup>1</sup> But: "The Secretary, in his No. 72, also mentions that Mr. Stratford Canning, at the period of its date [July 29th, 1813,] was at New York, on the eve of his return to England, and that while exercising his mission in Washington, he had shown in all his official relations with our government a very high sense of honour, and connected with it a quality inestimable in a statesman—a conscious sense of moral obligation; and that his conduct during his residence had "been in all the social relations, exemplary. 'I am requested to mention these sentiments to this Government.'" (Rush, *Residence at the Court of London*, ii, 36. This is in marked contrast with the language respecting Canning's official demeanour used in Adams' Life.)

made against the annexation of the Papal States to the Kingdom of Italy. Mr. Bayard on that occasion recognized "the full and independent right" of the King of Italy "to decide the question of personal acceptability to him of an envoy" of the United States, and Mr. Keiley, on being made acquainted with the refusal of the Italian Government, promptly resigned his commission; in consequence no ill-feeling between the two Governments resulted.

Almost immediately afterwards, Mr. Keiley was appointed to Vienna, and the Austro-Hungarian minister at Washington, who had telegraphed the news to his Government, received instructions by telegraph to say that since, as at Rome, scruples prevailed against this choice, he was to direct the attention of the American Government, in the most friendly way, to the generally existing diplomatic practice to ask, previously to any nomination of a foreign minister, the consent (*agrément*) of the Government to which he is to be accredited. He was earnestly to entreat them that the newly nominated minister might not reach Vienna before the confidential consent to his nomination had taken place.

Unluckily, Count Kalnoky added that "the position of a foreign envoy wedded to a Jewess by civil marriage would be untenable and intolerable in Vienna," and unluckily, too, the Austro-Hungarian minister handed to Mr. Bayard a copy of the telegram. This afforded to the latter the opportunity of asserting that the only reason given was the allegation as to Mrs. Keiley's religion, which he indignantly repudiated as sufficient ground for the refusal, inasmuch as it was contrary to the United States constitution, which forbids religious tests as a qualification for any office or public trust, and to the principle of religious liberty which was the chief cornerstone of the American system of government. Mr. Bayard, at the same time, in the conclusion of his Note to Baron Schæffer, stated that the President fully recognised.



“ the undoubted right of every Government to decide for itself whether the individual presented as the envoy of another state is or is not an acceptable person, and, in the exercise of its own high and friendly discretion, to receive or not the person so presented.”

In another Note, dated two days later, he discussed the question whether it was necessary previously to ask for the consent of the Government to whom the minister was to be accredited. As the result of search in the archives of the department for the past ninety years he found that there was no instance of this having been done by the United States, and he explained that the reason of the practice was that frequent elections at regular intervals might render it difficult to procure the consent of a foreign Government to the appointment of agents whose views were in harmony with the latest expression of public opinion, if the new Government should happen to have superseded one whose policy was more in accord with that of the foreign Government concerned.

Subsequently letters were received from the outgoing United States minister at Vienna, reporting that the Austro-Hungarian Government based their refusal on the ground that the Italian Government had objected to Mr. Keiley, and that its views had found earnest expression at Vienna since the President had nominated him to Austria-Hungary ; the fact that his wife was a Jewess did not influence the judgment of the Government, but the latter could not prescribe social usage, which might be unpleasant in that regard. The main reason for objection was not the action of Italy, but the public utterances of Mr. Keiley, which were of a character not agreeable to the Austro-Hungarian Government. Then the Vienna Press took the matter up, and explained that the refusal to receive Mr. Keiley arose from a desire to manifest regard for the feelings of the King of Italy, whose father, it was alleged, had been spoken of by him in somewhat unmeasured terms. Finally, the Austro-

Hungarian Government definitely refused to receive Mr. Keiley, who thereupon sent in his resignation. The result of the controversy was that the President declined to make a fresh nomination, and left the legation in the hands of a secretary as *Chargé d'affaires*.<sup>1</sup>

§ 233. In 1891 the United States appointed Mr. Henry W. Blair minister to China. In April, when he was already on his way thither, the Chinese Foreign Office and Li, the viceroy of Chihli, telegraphed their objection to the appointment on the ground that in 1882 and 1888 he had "bitterly abused China in the Senate," and that he had "abused the Chinese labourers too bitterly while in the Senate and was conspicuous in helping to pass the oppressive Exclusion Act." Thereupon the Department of State telegraphed to him to return to Washington. After his return he defended himself against these accusations; he quoted, however, from the congressional record, showing that he had said the coming of the Chinese labourer was as harmful as the yellow fever, that the Chinaman was detrimental to the civilization of the American people, and described the Chinese quarter at San Francisco as a "seething, roaring, blood-curdling curse." He concluded his defence by saying—

"If the tests applied to my conduct in this case are to be acquiesced in by our Government, freedom of discussion in and out of the halls of legislation, and of intercourse between the Executive and Congress, will be ended on the one hand, or, on the other, representation of our country abroad by men who have taken part in public affairs must cease."

At the same time he placed his resignation in the hands of the President. In response to a request made by the Secretary of State through the Chinese minister at Washington, that the Chinese Government would consent to reopen the case, the Chinese Foreign Office said: "Mr. Blair is not popularly regarded in China," but that if the President could do anything to repeal

<sup>1</sup> Foreign Relations of the United States, 1886.

the Exclusion Law of 1888, " the situation in China would be much changed, and then it would not make much difference what Mr. Blair has said, and he would be well received if the President asked for it." The message from Peking quoted some of the language used by Mr. Blair, and questioned whether—before any satisfaction was given to China or answer returned to Notes addressed by the previous Chinese minister to Mr. Bayard and to Mr. Blaine—it was reasonable to ask the Chinese Government to receive as minister one of the men who voted for that law and had made such speeches against the Chinese as those which had been seen by the Chinese Foreign Office. This message being communicated to Mr. Blair, he again addressed the President, suggesting that if he were to instruct the minister at Peking to negotiate a new treaty upon the subject of Chinese immigration, the Chinese Government might embrace the opportunity to " withdraw its objections to the minister, or rather to the country which he represents." To this he added a further explanation of his action and language in the Senate. After the lapse of nearly three months, the President wrote to Mr. Blair, finally accepting his resignation, and stating that he had directed the Secretary of State to protest to the Chinese Government against the insufficiency of the objections presented by it, and to say that he had terminated the correspondence by a peremptory resignation. The published papers show that he had withdrawn his resignation some days before the further explanations which he furnished to the President, and there is no record of its having been renewed. At the same time, the minister then in China was instructed to deny the sufficiency of the allegations made in respect of the views concerning the Chinese people which were stated to have been entertained and uttered in legislative debate by Mr. Blair.

" If Mr. Blair may not be received as minister while that law [of 1888] remains unrepealed, and because of its existence

as a law, it is not easy to reconcile that position with the continued friendly reception of the present minister of the United States at Peking. In this aspect, as in every other aspect, the position assumed by China is incongruous and inadmissible.”<sup>1</sup>

There was no interruption of the diplomatic representation at Peking.<sup>2</sup>

§ 234. The United States has observed the practice of inquiring in advance as to the acceptability of persons whom it has desired to nominate as *ambassadors* since the Government began to appoint diplomatic agents of that grade,<sup>3</sup> but it adheres to its ancient rule with respect to its envoys and diplomatic representatives of a lower grade.<sup>4</sup>

§ 235. It is seldom that the subject of another State is employed as envoy to his own sovereign. Before he can appear in that capacity he must apply for the approval of his own sovereign.

§ 236. Many courts go too far in their suspicions and motives of refusal; *e.g.* Sweden in 1757 refused to accept the envoy of Great Britain, Goodrich, because, after his appointment, he had visited a prince with whom Sweden was at war. Great Britain consequently broke off diplomatic relations with Sweden.<sup>5</sup> In 1792 the King of Sardinia refused to receive Sémonville as French minister, and in 1820 the Prussian envoy, Baron von Martens, because he had married the daughter of a regicide. In 1847 the King of Hanover refused Graf von Westphalen because he was a Roman Catholic.

§ 237. In France it has been for some time settled as a constitutional maxim that subjects are not admissible

<sup>1</sup> *Nouveau Recueil Général de Traités*, t. xxii. 271-91.

<sup>2</sup> Hall, 6th edit., 294 n.

<sup>3</sup> Moore's Digest, iv. 483.

<sup>4</sup> J. W. Foster, *Dipl. Mem.*, 37.

<sup>5</sup> Schmalz, *Europ. V.R.*, 87; Holtzendorf, iii. 632; Schmelzing, ii. 153.

as ambassadors. An exception appears to have been formerly made in favour of the ambassador from Malta. But a more unusual case was that of Pozzo di Borgo, Corsican by birth and consequently a French subject, who was Russian ambassador in Paris from 1815 to December 1834. The Emperor Nicholas, after 1830, became convinced that "ce Corse était un étranger, qui ni comprenait la Russie, ni ses intérêts politiques."<sup>1</sup> "Pozzo di Borgo était Français dans l'âme et Russe par la force des circonstances."<sup>2</sup> But Pozzo di Borgo was a naturalized Russian of French origin, like the Count de Bray, who was received at Paris as Bavarian envoy extraordinary.<sup>3</sup> Another case is that of Count Rossi, a native of Ferrara, but naturalized in France, who was French ambassador at Rome in 1846. In 1714 Sir Patrick Lawless was Spanish envoy in London, and General Wall from 1748 to 1762: both were Irishmen by birth. There is also the case of Benjamin Thompson, b. 1753 in New Hampshire. He entered the service of the Elector of Bavaria, by whom he was subsequently appointed Minister Plenipotentiary to Great Britain in 1798. He was refused by the government of George III, on the ground of his being a British subject, aggravated by the circumstance of his having formerly occupied the post of Under-Secretary of State in the American or Colonial Department in September 1780. He ceased to hold the appointment in October 1781. (George E. Ellis, *Memoir of Count Rumford*, Boston, 1871.) In 1875 the Pope declined the appointment of Cardinal Hohenlohe on the ground of his ecclesiastical rank. The real reason was probably the Cardinal's antagonism to the Infallibility, as clearly appears from his letters given in the *Memoirs of Prince Hohenlohe*. The work quoted in the last footnote states that several of the smaller German states were represented at Vienna by Austrians, and up to 1855

<sup>1</sup> F. de Martens, xv. 101.

<sup>2</sup> *Ibid.*, p. 100.

<sup>3</sup> De Martens-Geffcken, i. 41 n.



the *Chargé d'affaires* of the Hanse Towns in London was a British subject. Wicquefort had been resident of the Duke of Lüneburg at the Hague, though he was a Dutch subject born at Amsterdam. The objection to receiving subjects as members of a foreign mission does not apply to secretaries in England. The Chinese, Japanese and Siamese legations in London have often employed British subjects in this capacity.

A State may declare *beforehand* the terms under which it will consent to receive its own subject as a foreign diplomatic agent. But if the subject be received without any such previously promulgated stipulation he will be entitled to the full *jus legationis*.<sup>1</sup>

§ 238. "The laws of the United States forbid the employment of any other than a citizen of the United States in its diplomatic service. It is also a rule of the Department of State that no citizen of the United States shall be received by it as the diplomatic representative of a foreign government, but this rule is of a flexible character in its application. Anson Burlingame, who for some years had acted as the American minister in China, resigned to accept from the Chinese Government the post of special ambassador to the United States and certain European Governments. He was received as such in Washington, and Secretary Fish negotiated with him and his colleagues an important treaty." <sup>2</sup>

"Mr. Camacho, a native of Venezuela but a naturalized citizen of the United States, was accepted as minister from Venezuela in 1880, on renewal of relations with that country which had been for some time suspended. On the other hand, General O'Beirne, a prominent citizen of New York, was accredited as diplomatic representative of the Transvaal Republic to the United States at the outbreak of hostilities with Great Britain; and the Secretary of State, applying the rule, declined to receive him on the ground of his American

<sup>1</sup> Phillimore, ii. 152.

<sup>2</sup> For the official communication of their mission by Burlingame and his two Chinese colleagues to the Secretary of State, asking for an audience of the President for the purpose of delivering their credentials, and Mr. Fish's reply informing them of the time fixed for their reception, and for the address of Mr. Burlingame to the President and the President's reply, see *Foreign Relations of the United States*, 1868-9, part i, 601-4. For the correspondence relating to this appointment see the same vol., 493.



citizenship, thus avoiding the question of the reception of a representative of a country which the British Government claimed was a suzerain state."<sup>1</sup>

"In late years a practice grew up of securing the insertion in the *Diplomatic List*, published monthly by the State Department, of the names of resident attorneys of Washington as counsellors of certain legations of the less important countries. The main object of such insertion was to secure thereby invitations for the persons named and their wives to the receptions and teas at the White House. When the attention of Secretary Root was called to the practice he directed it to be discontinued, basing his action on the rule above cited, that an American citizen could not be clothed with a diplomatic character in a foreign legation in Washington."<sup>2</sup>

Holtzendorf is under a misapprehension, therefore, when he states that the United States Government declined to recognize Burlingame except as a commissioner without diplomatic character.<sup>3</sup>

<sup>1</sup> This is not quite correct. The British Government claimed to be the suzerain of the Transvaal Republic. "Vassal State" would be the better term to use.

<sup>2</sup> J. W. Foster, *Practice of Diplomacy*, 49, 50.

<sup>3</sup> iii. 631.

## CHAPTER XV

### DIPLOMATIC AGENT PROCEEDING TO HIS POST

§ 239. What he will find there, and take with him—§ 240. Passport—§ 241. Instructions—Hon. Henry Legge's in 1748—§ 242. Delegate to a Congress or Conference receives full-powers—§ 243. Former practice of formal entry—§ 244. Proceedings on arrival—§ 245. Until credentials presented, no formal visits—§ 246. Speech on presenting credentials—§ 247. Ségur's audience of Catherine the Great—§ 248. Chateaubriand's speech to the Conclave—§ 249. Language of the speech—§ 250. Examples of speeches—§ 251. Examples of a Sovereign's reply—§ 252. Speech of Spanish Ambassador to French President—§ 253. President's reply—§ 254. Reception of Ambassador by Head of the State—§ 255. Reception of an Envoy—§ 256. Ceremony at Washington—§ 257. Audiences of members of reigning family—§ 258. Reception of Envoy where there are no ambassadors—§ 259. Ceremonial at the Vatican—§ 261. At the Court of Great Britain—§ 262. In Peru.

§ 239. UNDER ordinary circumstances a newly appointed diplomatic agent proceeding to his post will most probably find there an established mission, fully provided with archives containing previous correspondence with his own Foreign Office, with the Minister for Foreign Affairs of the State to which he is accredited, and with miscellaneous persons ; also cyphers, collections of treaties and all other helps and appliances which he will require. He must carry with him his credentials to the Head of the State, or if he is a *Chargé d'affaires* a letter accrediting him in that capacity to the minister for Foreign Affairs at the capital where he is to reside. It will be prudent on his part to ascertain beforehand that the letter of recall of his predecessor has been presented in the proper quarter, or if that formality has not yet been complied with, to take the letter of recall with him. For in the contrary event it may happen that on arriving at his post and applying for an audience to present his

credentials, he may receive for answer that his predecessor is not yet *functus officio*, and so his own recognition may be delayed until the necessary document can be procured from home. Meanwhile reports will, perhaps, be circulated throwing doubt upon his own acceptability to the Government.

Forms of letters of credence are given in Chapter VIII.

§ 240. A passport will be found useful. Callières recommends the perusal of the despatches exchanged with his predecessor by the foreign department, and after having perused them with care and reflection, to discuss pending questions with the head of the office. He should gain as much information as possible from those who have preceded him at the post to which he has been appointed, and also make friends with the diplomatic representative of that State, who will be able to write home a favourable account of his character and disposition. He should also be careful in the choice of the servants he takes with him.<sup>1</sup>

§ 241. Most of the books seem to assume that a diplomatic agent, on proceeding to his post, is provided, as a matter of course, with written instructions—

“ On y trace la marche à suivre dans les négociations de toute nature ; on y renseigne le ministre sur le personnel de la cour où il est envoyé, sur les membres du corps diplomatique ; on y expose sommairement le système de politique adopté, les relations plus ou moins amicales, les affaires pendantes ou récemment terminées ; en un mot, tout ce qui peut servir de guide ou de règle au diplomate dans l'exercice de ses fonctions.” <sup>2</sup>

This is not, however, always done. It will depend on circumstances, as, for instance, whether there is any particular question in course of negotiation between the two Governments or not. Even then, since important instructions are in these days generally sent by telegraph,

<sup>1</sup> *La manière de négocier*, etc., 211.      <sup>2</sup> De Martens-Geficken, i. 69 n.

written instructions carried by an agent would often be out of date by the time he reached his post. Consequently, the usual practice is to inform him that in the archives of his mission he will find most of the instructions he needs, and that others will reach him from time to time. Even at earlier periods, before the advent of the electric telegraph and submarine cable, the written instructions given to an agent were often of a merely formal nature. When the Hon. Henry Legge was sent to Berlin, in 1748, besides his formal instructions, he received others much longer, of a very confidential character, relating to proposed negotiations for an alliance between George II and Frederick the Great. Two years later, when Sir Charles Hanbury Williams was appointed, his formal letter of instructions was word for word identical with what had been given to Legge, but he does not appear to have been provided with others.

§ 242. The case of a negotiator at a Congress or Conference is naturally different. On such occasions special written instructions are indispensable. The delegate to such gatherings receives only full-powers, not credentials. An ordinary permanent diplomatic agent is not provided with full-powers, unless he is entrusted with the negotiation of a treaty or a convention.

Before starting for his post the agent should take care to let the probable date be known of his intended arrival, in order that when he reaches the frontier he may at once enter on the enjoyment of all the privileges and immunities attaching to his position, especially with regard to the passage of his personal effects through the Custom House.

§ 243. Formerly it was the custom for ambassadors to make a formal state entry into the capital of the sovereign to whom he was accredited, but this practice is no longer observed. A special ambassador is often

welcomed at the railway station on his arrival by the minister for Foreign Affairs. But, generally speaking, diplomatic agents travel to their posts with as little outward show as private persons.

With regard to his passage through a third country before arriving at his destination, see below, § 348.

§ 244. On reaching the capital he should at once notify his arrival to the minister for Foreign Affairs, and at some capitals also to the Grand Master of the Ceremonies or to the Introductor of Ambassadors. This may be done by letter. He calls on the minister for Foreign Affairs, and requests him to take the orders of the Head of the State respecting an audience for the purpose of presenting his credentials, of which he must also furnish a copy beforehand.

§ 245. Until he has presented his credentials, with the due ceremonies which are the outward and visible signs of his official character, the agent makes no official calls. But as most European Powers, at least at the present day, appoint members of their regular diplomatic service to represent them at foreign capitals, he is likely to find among his future colleagues acquaintances or friends with whom he has been previously associated in the course of his career, and he can freely make *private* visits to them. It is also advisable to call privately on the *doyen* of the diplomatic body, who will be able to afford him useful information as to the ceremonies accompanying the presentation of his credentials, the audiences of members of the reigning family for which he will have to ask, the official calls he must make, and other matters of local etiquette. On these points, however, it must be understood that Court and departmental officials, like the Grand Master of the Ceremonies or the Introductor of Ambassadors, are the authoritative exponents of the local etiquette. He may even call unofficially on the minister for Foreign

Affairs, in order to make his acquaintance. Thus, as was reported in *The Times* of March 5, 1915, the new Belgian Envoy, who arrived on March 3, called on the Secretary of State and the Permanent Under-secretary on the following day.

§ 246. On being informed by the proper authority, who is the minister for Foreign Affairs, in the first place, of the day and hour at which his audience is to take place, if it is the received local usage for the agent to address a formal speech to the Sovereign or President, he sends to the minister for Foreign Affairs a copy of what he proposes to say, but he has no right to expect a copy of the reply which will be made to him. Such a speech should be of a general character. It commences by a statement of the agent's satisfaction at having been appointed to represent his country, conveys assurances of friendship on the part of his own Sovereign or President, his own wishes for the prosperity and welfare of the Sovereign or President whom he is addressing, for those of his family and people ; it promises that he will do all in his power to cement the friendly relations which exist between the two countries, and bespeaks the friendly co-operation of the Sovereign's or President's ministers in his endeavours to fulfil the purpose of his mission. He mentions also his credentials (when doing so takes the latter from his senior secretary and presents it to the Sovereign or President, who hands it, usually unread, to the Minister for Foreign Affairs). If the agent has formerly had diplomatic employment in the country, *e.g.* as secretary, a graceful allusion to an agreeable sojourn will be in place.

The speech must on no account contain any reference to matters of controversy between the two States, nor to any current business, but if an alliance of a definite character exists, mention of it may be fitly introduced.

We remember an instance in which a diplomatic agent, on the occasion of presenting his credentials, committed



the mistake of urging certain pecuniary claims of his countrymen against the Government of a South American republic to which he was accredited, and thereby gave serious offence at the very outset of his mission.

The object of communicating a copy of the speech beforehand is to give the Head of the State, to whom it is to be addressed, an opportunity of requesting modifications, and it has happened on more than one occasion that this has been done.<sup>1</sup>

§ 247. Besides committing his speech to memory as far as he is able, the agent would do well to have a copy in his pocket. In 1785 the Comte de Ségur, on proceeding to the Palace for his audience of Catherine the Great, while waiting in the ante-room, engaged in a conversation with his Austrian colleague, which proved of such an absorbing character that the speech which he had prepared faded wholly from his memory. When he entered the presence of the Empress, he found that he could not recollect a single word of it, but with great presence of mind improvised an entirely new speech, to her great surprise, as she had received a copy of the original discourse, and had framed a corresponding answer. Subsequently, when he came to be on intimate terms with the Empress, she asked him one day why he had suddenly taken into his head to change his speech at his first audience. He replied that he had lost his nerve in the presence of so much glory and majesty, and so expressed the sentiments of his sovereign in the first phrases that suggested themselves. The Empress answered that he had done right. Every one had his failings, and one of hers was easily to conceive prejudices. "I remember that one of your predecessors was so perturbed on the occasion of his presentation to me, that he could only say, 'Le Roi mon maître. Le Roi mon maître.' The third time he repeated these

<sup>1</sup> García de la Vega, 635.

words, I interrupted him by saying that I had long been aware of his master's friendship for me. Everybody assured me that he was an intelligent man, but his bashfulness always made me prejudiced against him, for which I reproach myself, but, as you see, somewhat late in the day."<sup>1</sup>

§ 248. One of the most eloquent discourses ever delivered at a solemn reception was that of Chateaubriand, when presenting his condolences to the Conclave on the death of Pope Leo XII, but it was considered by some to have been far too long-winded. It extended to seven hundred and eighty-four words.<sup>2</sup> Without doubt it is a magnificent composition, worthy of the author and of the occasion.

§ 249. It is not usual for the diplomatic agent to speak again in reply to the answer made to him by the Sovereign or President.

The language of the speech may be that of his own nationality, or the universally recognized diplomatic language, namely, French, whichever is most convenient, and the reply of the Head of the State will be framed accordingly. In Oriental countries the former is most usual, the speech being translated into the language of the country by an official interpreter. The sovereign replies in his own tongue, and the reply is then translated.

§ 250. The following will serve as a model for a discourse on such occasions—

SIRE,

J'ai l'honneur de présenter à Votre Majesté les lettres qui m'accréditent auprès de son auguste personne en qualité de . . .

Permettez-moi, Sire, d'être en même temps auprès de Votre Majesté l'interprète des sentiments d'estime et de sympathie que mon souverain professe à un si haut degré pour la personne

<sup>1</sup> *Mémoires et Souvenirs de M. le Comte de Ségur*, 3rd edit., ii. 215.

<sup>2</sup> *Mémoires d'Outretombe*, edit. Ed. Biré, v. 614, app. ii.; *Garden, Traité Complet de Diplomatie*, iii. 245.

de Votre Majesté, et les vœux qu'il fait pour la félicité de votre famille et pour la prospérité de vos peuples.

A l'expression de ces sentiments, daignez, Sire, me permettre d'ajouter l'hommage de mon profond respect. Pendant le cours de la mission que je vais commencer, je ferai tout ce qui dépendra de moi pour mériter la confiance de Votre Majesté; je me trouverai heureux si j'y réussis et si mes constants efforts contribuent à resserrer encore les liens d'amitié et d'intérêt qui unissent déjà si étroitement les deux peuples.<sup>1</sup>

Another—

SIRE,

J'ai l'honneur de remettre à Votre Majesté, les lettres par lesquelles le . . . m'accrédite auprès de votre auguste personne en qualité de Son . . .

Le . . . mon auguste Souverain, a voué à Votre Majesté une profonde sympathie personnelle et un sincère intérêt; et il espère que les relations amicales entre les deux pays, basées sur des sentiments et sur des traditions de véritable amitié, continueront à être des plus cordiales. Ces relations entre deux grandes nations seront un gage de plus pour la paix de l'Europe, qui est un des vœux les plus chers de . . . mon maître.

Je suis infiniment heureux, Sire, d'avoir eu l'honneur d'être désigné comme Représentant de . . . dans un pays rempli de si belles pages historiques et vers lequel j'ai été toujours attiré par la plus vive sympathie; et j'ose espérer que l'indulgence de Votre Majesté à mon égard ne manquera pas de faciliter ma haute mission."<sup>2</sup>

§ 251. The reply of the Sovereign may be worded in some such form as the following—

Je reçois avec un véritable plaisir les assurances que vous venez de me donner, au nom de . . . des sentiments qui l'animent pour ma couronne et de ses vœux pour la félicité de ma famille . . . et de mes sujets.

Extrêmement sensible à ce témoignage de vif intérêt, je vous demande de vouloir bien assurer Sa Majesté que j'emploierai tous mes efforts pour y correspondre et pour resserrer de plus en plus les liens d'amitié qui existent si heureusement entre les deux pays.

<sup>1</sup> García de la Vega, 636.

<sup>2</sup> de Castro y Casalciz, ii. 291.

Quant à vous, M. le . . . je me plais à vous annoncer que le choix de votre personne par S.M. . . . ne peut pas manquer de m'être agréable et d'être pour vous une garantie de ma bienveillance.

*Or*, Je suis très-sensible à la preuve (nouvelle preuve) d'amitié que me donne S. M. . . . en accréditant un . . . auprès de ma personne, et il m'est fort agréable, Monsieur, que son choix se soit fixé sur vous.

*Or*, Les qualités qui vous distinguent, le zèle et talent dont vous avez fait preuve dans le service de votre pays, sont pour vous une garantie de ma bienveillance et de la valeur que je donne au choix que Sa Majesté . . . a daigné faire de votre personne pour son représentant à ma Cour.”<sup>1</sup>

§ 252. Speech of a Spanish ambassador to the President of the French Republic—

MONSIEUR LE PRÉSIDENT,

J'ai l'honneur de remettre à Votre Excellence les lettres par lesquelles S. M. le roi Don . . . m'accrédite en qualité d'Ambassadeur Extraordinaire et Plénipotentiaire auprès du Président de la République Française.

C'est avec empressement que je saisis cette occasion solennelle pour exprimer, au nom de mon auguste Souverain, les vœux très sincères qu'il forme pour la prospérité de la France et pour le bonheur de l'homme d'Etat élevé par ses concitoyens à la première magistrature du pays.

Quant à moi, porté vers la France par toutes mes sympathies, j'accepte avec joie l'honorable mission de maintenir, de développer et de rendre encore plus intimes les bons rapports déjà existants entre deux nations sœurs par la race et l'origine, par le voisinage et la communauté des intérêts.

J'apporterai tout mon zèle dans l'accomplissement d'un devoir si conforme à mes sentiments, et j'espère pouvoir compter, pour y réussir, sur la haute bienveillance de M. le Président de la République comme sur le puissant et amical concours de son gouvernement.

§ 253. Reply of the President of the French Republic—

MONSIEUR L'AMBASSADEUR,

Je remercie S. M. le roi d'Espagne des vœux que vous m'apportez en son nom pour la France et pour le Président

<sup>1</sup> García de la Vega, 636.

de la République. J'ai eu récemment l'honneur de dire à votre illustre prédécesseur, et je saisis avec empressement cette nouvelle occasion de répéter, combien je désire ardemment le bonheur de la noble nation espagnole et de son auguste Souverain.

Pour vous, monsieur l'Ambassadeur, qui connaissez la France, et qui en parlez si affectueusement, soyez persuadé qu'elle vous accueillera avec une vive sympathie et que vous trouverez auprès de son gouvernement, dans l'accomplissement de votre mission, tout le concours et toute la cordialité que vous pouvez souhaiter.<sup>1</sup>

§ 254. At most Courts there is a marked distinction between the reception of Ambassadors, on the one hand, and of Envoys Extraordinary and Ministers Plenipotentiary and diplomatic agents of lesser rank on the other.

An Ambassador is fetched to the Palace by a Court official with one or more Court carriages for himself and his suite, while Envoys and other ministers use their own carriages. Usually the Ambassador enters the presence unaccompanied by the members of his mission, and after the conclusion of the ceremony of delivery of credentials he asks permission to present them. At most Courts he is introduced to the presence of the Sovereign by the Grand Master of the Ceremonies or by a Court official of equivalent importance, at others by the "Introducer of Ambassadors." He does not always make a set speech; this is a point regulated by local custom. The ceremonial in returning to his residence is the same as on going to the audience. In most countries, after having presented his credentials, the Ambassador makes the first official call on the other Ambassadors, but he receives the first call from Envoys and Ministers resident. He also holds one or two official receptions, to which are invited the other members of the diplomatic body, official persons and other distinguished members of society, of whom a list is furnished to him by the proper Court official. If he is married, the Ambassadors will at the same time receive the wives of the before-mentioned persons.

<sup>1</sup> de Castro y Casaleiz, ii. 291, 292.



In general, an Ambassador, on retiring from his post, goes to the Palace in his own carriage, without the members of his mission, and presents his letters of recall at a private audience. If he is unable to present them himself, they are delivered by his successor together with his own credentials.

Ambassadors on all public occasions rank after the members of the Imperial and Royal families, and members of foreign reigning families who may happen to be present.

§ 255. An Envoy Extraordinary and Minister Plenipotentiary, or a Minister Resident, goes to his audience without the members of his legation and in his own carriage, and makes no set speech when delivering his credentials. At Paris and Madrid, however, he takes his *personnel* with him, and presents them at the end of his audience. Altogether it is a much simpler affair than the audience accorded to an Ambassador.

§ 256. At Washington an Envoy goes in his own carriage to the Department of State, whence he is accompanied without display to the White House by the Secretary of State, and into the Blue Room, where he remains while the Secretary of State goes to notify the President of his arrival. The President enters with his secretary, the Envoy is presented and at once proceeds to read his address, which is replied to by the President. The letter of credence is received by the President and handed to the Secretary of State, and after a brief informal conversation the reception ends. Since the establishment of Embassies at Washington, the practice has been to send a member of the President's military staff in one of his carriages, with a cavalry escort, to bring the Ambassador to the White House.<sup>1</sup>

§ 257. Besides the audience for the presentation of credentials to the Sovereign, there are other audiences

<sup>1</sup> J. W. Foster, *The Practice of Diplomacy*, etc., 63.



of the Sovereign's Consort, and presentations to members of the Imperial or Royal Family. To give all the details, as they are laid down in the *Guía Práctica* and in other sources of information, would unduly increase the bulk of this chapter, and they can be best learnt at each capital by the newly arrived diplomatic agent from the proper Court official. No attempt is therefore made to supply them here.

§ 258. In countries where there are no Ambassadors, it seems to be the rule that Envoys and Ministers Resident are fetched in state carriages to the audience for the presentation of credentials. At some of these it is the custom to make a speech on delivering credentials, at others not. The minister for Foreign Affairs is usually present on such occasions, but not at the audience for taking leave.

#### § 259. *Ceremonial of the Vatican.*

When an Ambassador arrives at Rome he announces his arrival to the Cardinal Secretary of State through the Secretary of Embassy who has discharged the functions of *Chargé d'affaires*, who, in handing to His Eminence the usual copy of the credentials, solicits, in the Ambassador's name, the necessary audience for their formal delivery to the Holy Father.

The Ambassador, accompanied by the first secretary of the Embassy, pays a private visit to the Cardinal Secretary of State, to whom he hands a copy of the discourse, which he will deliver at the formal audience on the occasion of the presentation of his credentials.

When the day and hour of the audience have been fixed, the Ambassador proceeds to the Vatican accompanied by the whole *personnel* of the Embassy, and his two pages in state carriages. The cortège is formed in the following manner :

In the first carriage go the two pages of the Embassy in full uniform.

In the second the secretaries and attachés.

In the third the Ambassador, and opposite to him, in the front seat, the first secretary or whoever has discharged the functions of Chargé d'affaires, carrying the red despatch-box with the arms of his sovereign in which are the credentials.

These carriages and the liveries of the servants have to be *de gala*, and on the Ambassador's carriage, besides the coachman and two lacqueys, the *chasseur* of the Embassy goes.

On the Ambassador and his suite entering the gate of the Vatican on the side of the Mint, the Swiss Guard forms up and presents arms.

Two chamberlains *di cappa e spada* await the Ambassador at the foot of the principal staircase in the Court of San Damaso, and accompany him to the pontifical apartments. The Monsignore Secretary of the Holy Congregation of Ceremonial receives the Ambassador in the Sala Clementina, and accompanies him to the Sala degli Arazzi, where he has to wait for his reception.

The gendarmes are drawn up in the first antechamber, the Guardia Palatina in the second, and in the last the Guardia Nobile of His Holiness.

The Holy Father, seated on the throne, surrounded by his Court and having the Monsignore Maggiordomo and the Monsignore Maestro di Camera at his side, receives the Embassy, which on entering kneels down three times, once on the lintel of the door, a second at the middle of the room, the third in front of His Holiness. The Ambassador comes up to the steps of the throne, kneels down, and kisses the foot of the Holy Father, and, rising up, delivers a discourse, which may be, more or less, as follows—

SAINT PÈRE,

J'ai l'honneur insigne de déposer entre les augustes mains de Votre Sainteté, les lettres par lesquelles le Roi, mon maître, m'accrédite en qualité d'Ambassadeur Extraordinaire et Plénipotentiaire auprès de Votre Béatitude.

Le Roi, mon Auguste Souverain, dont les sentiments de tendresse filiale envers le Suprême Pontife sont un doux héritage, précieusement transmis par ses glorieux ancêtres, adresse aujourd'hui au très-Haut les prières les plus ardentes pour qu'il daigne accorder à Votre Sainteté de longues années de bonheur et de paix, telles que les hautes vertus de Votre Sainteté les méritent, telles que notre Sainte Religion les demande ; telles que mon Auguste Souverain et [name of the country] entière les implorent du Tout Puissant.

SAINT PÈRE,

Le Roi mon maître, en m'accordant l'honneur insigne de le représenter auprès de Votre Sainteté, m'a imposé le devoir de cultiver et de resserrer les liens d'amitié étroite et sincère qui unissent les deux Cours. Ce devoir je le remplirai de toutes les forces de mon âme, et je suis sûr de réussir dans la haute mission que m'a confiée la bonté de mon Roi, si Votre Béatitude daigne m'accorder sa haute bienveillance et sa protection paternelle.

In delivering this discourse, when he comes to the paragraph in which he mentions the credentials, he will place them in the hands of His Holiness, who hands them to the Monsignore Maggiordomo.

This discourse may also be pronounced in the ambassador's native language, or in Italian, if he is a master of it. This was always done by His Excellency Señor Don Francisco de Cardenas during the five years that he was Ambassador of Spain to the Holy See.

But in view of the fact that His Holiness, as a general rule, replies in Italian, it seems more natural to employ the diplomatic language.

His Holiness replies to the Ambassador's discourse in a short allocution, after which he invites the Ambassador to pass into his room, and, whilst they are alone, to take his seat on a stool close to the throne, and inquires respecting pending negotiations and any that have to be undertaken, conversing for a half or three-quarters of an hour. At the termination of the interview the Ambassador asks leave to present the *personnel* of the mission. His Holiness then calls, and the Monsignore Maestro di Camera presents the secretaries and attachés

one by one, who, in the order of their categories and seniority, kneel down and kiss the foot of His Holiness, who usually addresses a few words to each. When this ceremony is over, the Embassy takes its leave with the same ceremony, kneeling down three times before issuing from the hall ; and, accompanied by the Secretary of the Holy Congregation of Ceremonial, by some of the Swiss Guards and by the pages of the Embassy, who in accordance with custom have remained in the Sala della Contessa Matelda, descends to the apartments of the Cardinal Secretary of State, who at once receives the Ambassador, the whole of the *personnel* waiting in the next room, except the pages who remain in the ante-chamber, and are not received by His Eminence.

After this conference, the Cardinal invites the *personnel* to pass into his study, and the Ambassador presents them to His Eminence. The visit being concluded, the Ambassador and his suite, accompanied by the Swiss Guards and the chamberlains *di cappa e spada* of His Holiness, and by the Secretary of the Holy Congregation of Ceremonial, pass by the inner galleries to the court of St. Peter, at the door of which the palace functionaries leave them, and they are received by two Canons, who accompany them to pray before the Sacrament and to kiss the foot of the statue of St. Peter, after which they return to the Embassy in the same style as that in which they went to the Vatican.

The reception of Ministers Plenipotentiary, Ministers Resident and of Chargés d'affaires is, with a slight difference, the same as has just been described. When the British agent at the Vatican and his colleagues presented their credentials after the outbreak of war in 1914, they went to the Vatican in their own carriages or motors, and were met by the Papal officials in the Cortilio di San Damaso.

The Ambassador next pays visits (in uniform and accompanied by the *personnel* of the Embassy) to the Dean of the Sacred College and to Cardinals related to

His Holiness (if there are any), and the latter return the visit in formal style, the Ambassador and *personnel* of the Embassy receiving them in uniform.

The secretaries and attachés await his Eminence in the ante-chamber of the Embassy or at the top of the staircase ; at the bottom he is received by the pages, and the Ambassador awaits the visit in the first drawing-room.

Besides sending circulars to the diplomatic body accredited to the Holy See, the Ambassador addresses a Note to the heads of missions accredited to His Holiness, framed in the following terms—

“ L’Ambassadeur de . . . aura l’honneur de recevoir le Corps diplomatique accrédité près le Saint Siège, le dimanche, lundi et mardi, . . . courant de 2 à 4 heures de l’après midi.

“ (En toilette de matin.) ”

At these receptions attends the whole Diplomatic Body, whom the Ambassador receives in frock-coat, accompanied by the *personnel* of the Embassy, the guests being announced by the pages, who are also in frock-coat.

Lastly, the Ambassador sends out invitations to a grand evening reception, which are addressed individually, and he receives in evening coat, but the pages who present the guests to the Ambassador as they arrive have to wear uniform.

The form of invitation for this reception is the same as for ordinary receptions—

“ L’Ambassadeur de . . . près le Saint Siège prie . . . de lui faire l’honneur de venir passer la soirée chez lui, le . . . à . . . heures.<sup>1</sup>

§ 261. *Ceremonial of the Court of Great Britain.*

*Ambassadors* on arrival notify the fact to the Secretary of State for Foreign Affairs in the usual manner, and ask for an audience of the Sovereign for the purpose of presenting their credentials, at the same time furnishing

<sup>1</sup> de Castro y Casaleiz, ii. 482, brought up to date.



the usual copy. They write also to the Secretary of State asking when he can receive them.

If the audience takes place in London, the Ambassador is fetched to it by the Master of the Ceremonies in a town-coach drawn by two horses. The *personnel* of the Embassy follow in other town-coaches, with attendants in Royal scarlet, and two footmen standing on the footboard at the back of each carriage, and its members are presented to the Sovereign at the end of the audience. Ambassadors never make set speeches.

The Ambassador is received at the Grand Entrance by the Master of the Household, and conducted by him to the Bow Room, where he meets the Secretary of State for Foreign Affairs (or in his absence the Permanent Under-Secretary of State for Foreign Affairs), the Lord in Waiting, the Groom in Waiting and the Equerry in Waiting.

The *personnel* of the Embassy are also shown into the Bow Room.

The Secretary of State having taken His Majesty's commands, the Ambassador is conducted to the Presence by the Secretary of State and the Lord-in-Waiting, and is announced to His Majesty by the Master of the Ceremonies.

The Lord-in-Waiting and the Master of the Ceremonies withdraw.

The reception over, the Ambassador is conducted to the Grand Entrance by the Master of the Household, and is accompanied to the Embassy by the Master of the Ceremonies, the *personnel* following as before.

If the Ambassador's audience takes place at Windsor, he is taken to the Paddington station in a town-coach by the Master of the Ceremonies, who travels down with him. The *personnel* of the Embassy find their own way to Paddington. On arrival at Windsor, carriages with semi-state liveries are provided to take the Ambassador and the members of the Embassy to the Castle.

At audiences granted to Ambassadors the Secretary of



State for Foreign Affairs is present, but in his unavoidable absence the Under-Secretary of State attends in his place. The presentation of the Ambassador is made by the Secretary of State or the Under-Secretary as the case may be.

Arrangements for subsequent receptions by members of the Royal Family are made through the Master of the Ceremonies.

Ambassadors do not hold receptions after the presentation of their credentials, as is the custom in some other countries. With respect to ordinary visits, heads of missions generally have recourse to their *doyen* for help and assistance.

An Ambassador applies for an audience of the Sovereign (other than that for presenting his credentials) either to the Master of the Ceremonies, or, in his absence, to the Private Secretary direct.

An Ambassador yields precedence only to members of the Royal Family.

An Envoy Extraordinary and Minister Plenipotentiary, or a Minister Resident, finds his own way to the Palace, and attends the audience alone.

He is met at the Grand Entrance by the Master of the Ceremonies, and conducted to the Hall, where he meets the Master, or Deputy Master, of the Household, and is taken by him to the Bow Room.

Here he meets the Permanent Under-Secretary of State, the Lord-in-Waiting, the Groom-in-Waiting, and the Equerry-in-Waiting.

The Under-Secretary of State having taken His Majesty's commands, the Minister is conducted by him and the Lord-in-Waiting to the Presence, and announced by the Master of the Ceremonies.

The Lord-in-Waiting and the Master of the Ceremonies withdraw.

At the conclusion of the Audience, the Minister is

conducted to the Hall by the Master of the Household, and to his carriage by the Master of the Ceremonies.

The procedure is the same as in the case of ambassadors, as far as asking for an audience and calling on the Secretary of State are concerned.

A Minister by Custom ranks between Dukes and Marquises.

Reception of a Foreign Envoy or Special Ambassador :—

The ceremonial is the same as in the case of a Permanent Ambassador.

A titular *Chargé d'affaires* is presented to the Sovereign at a *Levée* or a Court by the Secretary of State for Foreign Affairs. The precedence of *Chargé d'affaires* amongst Englishmen has not yet been settled.

A *Chargé d'affaires ad interim* will have been presented in his proper rank—Councillor, First Secretary, or whatever he may be—on his arrival, at the earliest *Levée*, but there is no second presentation as *Chargé d'affaires*; he simply assumes the duties of his chief, and attends *Levées*, Courts, etc., in his absence. When a Foreign Representative goes on leave, he writes to the Foreign Office to announce his departure and states whom he has left in charge.

The Heads of Missions are expected to attend *Levées*. They and the *personnel* of their missions have the *entrée*.

The wives of the members of the Diplomatic Body are entitled to precedence corresponding to that of their husbands.

Members of the Diplomatic Body are invited to Court Balls and Concerts.

#### *Visit of a Foreign Sovereign.*

Presentation of the Corps Diplomatique :—The Chefs

de Mission are presented to the Sovereign by the Ambassador, assisted by the Master of the Ceremonies.

§ 262. *Diplomatic Reception in Peru*, from the Règlement of November 19, 1892.

1. Of an Envoy Extraordinary and Minister Plenipotentiary.

The Foreign Minister announces his arrival by letter to the Minister of Foreign Relations, enclosing the usual copy of his credentials, and asking an audience for the purpose of delivering them to the President.

When the day and hour have been fixed, the Minister of Foreign Relations informs the foreign minister by letter, and the latter sends a copy of his official speech.

On the day fixed, the Master of the Ceremonies, accompanied by the *ayudante* of the Ministry of Foreign Relations, proceeds to the residence of the foreign minister to bring him in a Government carriage. The Master of the Ceremonies places himself on the left of the minister. If the *personnel* of the Legation consists of more than three persons, two official carriages are sent.

At his entrance into the Palace, military honours are accorded to the minister by the usual guard, which forms up.

The reception takes place in the presence of the Minister of Foreign Relations. The diplomatic agent addresses his speech to the President, which is replied to by His Excellency, who receives the credentials, handing them at once to the Minister of the Department. The speech and reply are published in the official journal.

If the foreign minister is accompanied by any members of the Legation who have not been previously presented to His Excellency the President, this can be done on the same occasion.

When the ceremony is over, an aide-de-camp of His Excellency the President accompanies the minister to

the door of the reception-hall ; the guard presents arms and strikes up a march, if the minister is Envoy Extraordinary and Minister Plenipotentiary. The guard simply forms up if he is only Minister Resident. The minister returns to his residence as he came, the Master of the Ceremonies and the Palace carriage or carriages taking leave of him there.

After the visit which the diplomatic agent pays to the Minister of Foreign Relations, the Master of the Ceremonies accompanies him to call on the other Ministers of State at their respective offices, in the established order.

In case of temporary farewells, returns to his post, presentations, delivery of letters respecting notification of birth, etc., the Foreign Minister is received in private audience by His Excellency the President of the Republic.

## 2. Reception of an effective Chargé d'affaires.

A Chargé d'affaires being accredited by his Minister of Foreign Affairs is not received by His Excellency the President of the Republic, but by the Minister for Foreign Relations in the presence of the Under-Secretary (*Oficial Mayor*). The delivery of the Lettre de Cabinet always takes place at a private audience and without speeches.

When this proceeding is over, if the Chargé d'affaires asks for a private audience in order to pay his respects (*saludar*) to His Excellency the President, this is granted. The Master of the Ceremonies accompanies him in order to make the presentation.

## CHAPTER XVI

### CLASSIFICATION OF DIPLOMATIC AGENTS

§ 263. Division into classes—§ 264. Derivation of "ambassador"—  
§ 265. Legates and Nuncios—§ 266. To what capitals appointed—  
§ 267. Origin of permanent diplomatic missions—§ 268. Meaning of *envoyé*—§ 269. Of "extraordinary"—§ 270. *Internonce* and *internuncius*—§ 271. Regulation of Vienna, 1815—§ 272. Additional regulation of Aix-la-Chapelle, 1818—§ 273. Precedence in signature—§ 274. Seniority—§ 275. Agent and Consul-general—§ 276. Their relative rank—§ 277. Representative character of ambassadors.

§ 263. DIPLOMATIC agents are now divided into the following classes—

1. Ambassadors. Legates; who are papal ambassadors extraordinary, charged with special missions, primarily representing the Pope as Head of the Church, always cardinals, and sent only to states acknowledging the spiritual supremacy of the Pope. Nuncios, who are ordinary ambassadors resident, and are never cardinals

2. Envoys and ministers plenipotentiary.

3. Ministers resident, accredited to the sovereign.

4. *Chargés d'affaires*, accredited to the minister of foreign affairs.<sup>1</sup>

§ 264. The derivation of Ambassador seems to be as follows: Fr. *ambaxadeur* (15th cent.), OSp. *ambaxador*, It. *ambasciatore*, from *ambaxade*, OSp. *ambaxada*, It. *ambasciata*; all these from *ambactiðre*, a word not found but inferred to have existed, and this formed on *ambactia*, *ambaxia* in the Salic and Burgundian laws, meaning charge, office, employment, name of an office formed on

<sup>1</sup> Hall, 6th edit., 294.

*ambactus*, a servant (? vassal, retainer). See Oxford Dictionary, and note to Rice Holmes' *Cæsar B.G.*, vi. 15; adaptation of a Gallic word. "Le mot ambaxador était apparu au milieu du XIII<sup>e</sup> siècle" (Nys, *Origines du droit international*, p. 317.) "Au XIV<sup>e</sup> siècle, la terminologie *ambaxiator continuus* atteste déjà la stabilité de l'institution." *Ambaxiator* occurs in the treaty between Henry V and Charles VI of France, of October 14, 1417 (Dumont, ii, pt. ii, 92; Rymer, IX, 517). "Du VIII<sup>e</sup> au X<sup>e</sup> siècle, dans les actes de la chancellerie, le verbe d'origine germanique *ambasciare* désigne l'intervention de quelque grand personnage dans le but de faire obtenir une concession du souverain; l'intermédiaire s'appelle l'*ambasciator*. Au XIV<sup>e</sup> siècle, ce dernier mot devient usuel et passe dans plusieurs langues" (R. de Maulde-la-Clavière, cited by Nys, *Le Droit international*, ii. 341).<sup>1</sup>

#### § 265. *Legates and Nuncios.*

The following may be regarded as an authoritative explanation of these two designations—

Legati in jure canonico sunt in triplici differentia, nempe legati *a latere*, legati missi seu nuncii apostolici, et legati *nati* . . . Legati *a latere* alii sunt ordinarii et alii extraordinarii. Legati *a latere* ordinarii sunt cardinales qui a Summo Pontifice in alia provincia legationis officium cum jurisdictione, seu potestate ordinaria ad instar præsidium provinciarum, ut sunt legati Bononiæ, Ferrariæ, Romandiolæ, etc. [The so-called Legations] . . . Legati *a latere* extraordinarii sunt illi qui mittuntur occasione alicujus emergentis necessitatis Ecclesiæ universalis, ut ad Concilia convocanda, vel etiam apud reges pro pace promovenda, sive pro Summi Pontificis paterno amore alicui regi in ejus adventu testificando, vel alia simili gravi causa . . . Et quamvis pluries a Summis Pontificibus pro similibus causis fuerint missi episcopi, et alii non cardinales; nunc autem constans praxis obtinuit

<sup>1</sup> "D'autres enfin, et ce n'est pas l'origine la moins piquante, prétendent qu'il est tiré de l'Italien *ambascia*, chagrin, peine, affliction, 'comme si l'on avait voulu marquer les travers qu'un ambassadeur essuie dans ses négociations'" (Garden, i. 12 n.). A sarcastic friend suggests *ambages*, as being the sort of wares dealt in by ambassadors.



non mitti nisi cardinales legatos *a latere* . . . Et dato quod contingat, ut contingit, mitti alios non cardinales, non datur eis titulus legati *a latere*, sed missus nominatur, nuntius cum *potestate legati a latere* . . . Legati missi, seu nuntii apostolici dicuntur, et sunt illi prœlati, non cardinales, qui a Papa mittuntur ad alios principes pro obeundo apud ipsos munere legationis . . . Et tales sunt nuntii Germaniæ, Franciæ, Hispaniæ, etc. et olim apocrisarii dicebantur Græco vocabulo . . . Legati nati dicuntur, et sunt illi, quorum dignitati, quam in Ecclesia obtinent, munus legationis est annexum, et dicuntur legati nati, non quod a Sede Apostolica non hauriant auctoritatem, sed quod hanc illa dederit fixæ cuidam Ecclesiæ, et quicumque illi fuerit præfectus, una simul etiam fiat, ac veluti nascatur legatus apostolicus, utopte cujus munus suæ dignitati de jure annexum habet. Sic legatus natus a jure dicitur archiepiscopus Cantuariensis in Anglia, archiepiscopus Eboracensis item in Anglia . . . Archiepiscopus Rhemensis in Gallia . . . In Germania plures archiepiscopi legatorum natorum nomine insigniuntur, ut archiepiscopus Salisburgensis, elector Coloniensis, archiepiscopus Pragensis.<sup>1</sup>

§ 266. So that, strictly speaking, a nuncio is also a *legatus*, of the class called *missus*, being thus distinguished from the *legatus a latere*, who nowadays is always a Cardinal, and from the *legatus natus*, who is not a diplomatic agent at all. In 1914 the Holy See was represented by *nonces apostoliques* in Bavaria, Austria-Hungary, Belgium,<sup>2</sup> Brazil and Spain. Representatives with that title were accredited to France till 1905, and to Portugal till 1911. In 1836 Prussia refused to receive a *nuncio*, as a serious innovation, not only rejecting the proposal in the particular instance, but for all future time, and firmly and unequivocally (Holtzendorf, iii. 630). France in 1921 received a *nuncio*.

The *nuncio* has always been regarded as *doyen* of the diplomatic body in accordance with Article 4 of the regulations annexed to the Vienna Congress Treaty of June 9, 1815; and this may either be construed as making the *nuncio* *doyen* at every Court to which a

<sup>1</sup> Ferraris, iv. 1401. See also Schmelzing, ii. 120.

<sup>2</sup> *Almanach de Gotha*.

*nuncio* is accredited, or only in such Courts as those to which a *nuncio* was accredited at the date of the regulations. The latter is the British official view at present [October 1921]. For the functions of the *doyen* see Chapter XXIII, § 369.

For *internuncio* see § 270. This is the title used by the Holy See for its ministers of the second class, and according to the view held by the Vatican in February 1921 he takes precedence over all other ministers of the second class. This seems to be correct.

In cases of disagreement among members of the Diplomatic Body as to precedence, the rules adopted by the Court to which they are accredited will be decisive (§ 374, end), and especially as to whether the question is governed by the date of official notification of arrival, or by that of presentation of credentials.

§ 267. Venice originated the institution of permanent diplomatic missions. In the sixteenth century the Republic had ambassadors ordinary at Vienna, Paris, Madrid and Rome, while the Emperor and the Kings of France and Spain had ambassadors, and the Holy See a *nuncio*, at Venice. Residents were accredited to the courts of Naples, Turin, Milan and London, as well as to the Swiss cantons. At Constantinople there was a *bailo* (*bajulus*).<sup>1</sup> It was partly the cost of embassies, partly the trouble arising from disputes about precedence and ceremonial, that led to the appointment of agents or *Residents*, who were not entitled to the same ceremonial honours as ambassadors.<sup>2</sup> In the sixteenth century the less honourable title of agent began to fall into disuse, and the process continued during the seventeenth century (Krauske, 160). *Chargé d'affaires* was another title for these diplomatists of inferior rank. *Resi-*

<sup>1</sup> Nys, *Origines*, 312. There was a Venetian *bailo* there already in 1249, but not till after the conquest by the Turks did he come to have a diplomatic character (Holtzendorff, iii. 613).

<sup>2</sup> Schmelzing, ii. 115; de Martens-Geffcken, i. 59.

dents are found at various periods till the close of the eighteenth century. In 1675 the Dutch negotiator of the preliminary treaty with Sweden respecting contraband of war, etc., is described as "Minister Celsorum & Præpotentium Dominorum Ordinum Generalium Fœderati Belgii ad Aulam altissime memoratæ Regiæ Sacræ Majestatis Sueciæ Resident," and also as "Dominus Resident," both in the preamble. Frederick William of Brandenburg (Der Grosse Kurfürst), from motives of economy, appointed no ambassadors. In 1651 he had Residents at the Hague, Vienna, Paris, Stockholm, Cologne and Brussels (Krauske, 129). Bonet was the King of Prussia's Resident in London in 1710. In 1745, France had a Resident at Geneva. The German Emperor in 1727 had residents at London, Lisbon and Constantinople. Vattel, in 1758, speaks of ambassadors, envoys, residents and ministers.<sup>1</sup>

§ 268. The designation Envoyé, which is a translation of *ablegatus*, seems up to the middle of the seventeenth century not to have been more highly esteemed than that of Resident.<sup>2</sup> At that period the general position was as follows: Diplomatic agents were still divided into two classes, the first consisting of Ambassadors or *legati*, the second comprising Agents, Residents, Envoyés and *Ablegati*; of these Agent is the earliest, Envoyé the latest in origin. Just as the title of resident had superseded that of agent, so the *envoyé* with the additional qualification of *extraordinaire* pushed the resident ever further into the background.

§ 269. In the second half of the seventeenth century arose the practice of designating resident ambassadors as "extraordinary." Originally this term had been applied only to those who were sent on special missions. The disputes about precedence between ordinary and extraordinary ambassadors furnished the motive to

<sup>1</sup> Nys *Droit, Intern.*, ii. 345.

<sup>2</sup> Krauske, 163.

both monarchs and their agents for this otherwise unreasonable custom. In imitation of the ambassador extraordinary, the addition was conferred upon envoys, who thereupon began to claim precedence over residents. Such questions of precedence were naturally regulated by the etiquette of the court to which the diplomatic agent happened to be appointed, and in Louis XIV's time the French Court refused to make any difference. Still the envoys extraordinary went on asserting their pretensions, until in the beginning of the eighteenth century the balance began to incline in their favour at Paris and Vienna, the two courts which were most regarded as having a voice in such matters, while lesser courts continued to recognize only the old division into two classes. The title of resident was also degraded by the smaller German courts giving, or even selling, it to private persons who had no diplomatic functions at all<sup>1</sup> (much in the same way as in more recent times they had conferred their decorations with a lavish hand). In the eighteenth century, between the envoy extraordinary and the resident there are found ministers, ministers resident and ministers plenipotentiary. *Plenipotentiarii nomine tales magis in usu sunt, quam vere tales*, says a writer of 1740 quoted by Krauske. At the negotiations which preceded the peace of Nijmegen (1678), the conjunction of the two titles of envoy extraordinary and minister plenipotentiary in one person made its appearance. According to the regulations at the French Court the envoy extraordinary presented his letters of credence to the King, while the mere minister plenipotentiary, like the resident and others of the third class, such as the chargé d'affaires, delivered theirs to the Minister for Foreign Affairs.

The common practice now is to give to an agent of the second class the double title of envoy extraordinary and minister plenipotentiary.

<sup>1</sup> Krauske, 165, 174.

§ 270. The Holy See sometimes employs for its ministers of the second class the title of *internonce apostolique*, sometimes that of envoy extraordinary and delegate apostolic, sometimes that of delegate apostolic alone.<sup>1</sup> From the middle ages onwards *internuncius* was in use to denote the diplomatic agent of a lay sovereign, but was not so common as *ambasciator* and *orator*. It first occurs in the literature of the subject in 1595. Its signification was gradually restricted until from the seventeenth century onwards it became the technical term for the Austrian agent at Constantinople from 1678 to 1856.<sup>2</sup> Its use by Austria is thought to have been adopted in order to avoid conflicts of precedence with the French ambassador, to whom Solymán the Magnificent (1520–1566) had undertaken by treaty to accord precedence over the representatives of all other potentates, and it was continued down to the time of the Crimean War. The *internonce* always belonged to the second class of diplomatic agents, when there were only two.<sup>3</sup> It seems possible that the English ambassador at Constantinople ranked after the French, and unless there were also Spanish and Dutch diplomatic agents of the first class the Austrian *internuntius* had the third place. In any case he ranked before agents of the second class (C. O. L. v. Arnim, cited by Miruss, 115).

The third and fourth classes (see p. 237) are a development of the “resident” and “chargé d'affaires” of the eighteenth century.

§ 271. The classification at the head of this chapter is based on the following regulations adopted at the Congress of Vienna in 1815 and added to at the Congress of Aix-la-Chapelle in 1818.

<sup>1</sup> *Almanach de Gotha* for 1914.

<sup>2</sup> Heffter, 7te Ausg. 428.

<sup>3</sup> Krauske, s.v.



*Règlement sur le rang entre les agents diplomatiques.*<sup>1</sup>

" Pour prévenir les embarras qui se sont souvent présentés et qui pourraient naître encore des prétentions de préséance entre les divers agents diplomatiques, les plénipotentiaires des puissances signataires du traité de Paris sont convenus des articles qui suivent ; et ils croient devoir inviter les représentants des autres têtes couronnées à adopter le même règlement."

Art. 1. Les employés diplomatiques sont partagés en trois classes :

Celle des ambassadeurs, legats ou nonces ;

Celle des Envoyés, ministres ou autres, accrédités auprès des souverains ;

Celle des Chargés d'Affaires, accrédités auprès des ministres chargés du portefeuille des affaires étrangères.

Art. 2. Les ambassadeurs, legats ou nonces, ont seul le caractère représentatif.<sup>2</sup>

Art. 3. Les employés diplomatiques en mission extraordinaire n'ont, à ce titre, aucune supériorité de rang.

Art. 4. Les employés diplomatiques prendront rang entre eux, dans chaque classe, d'après la date de la notification officielle de leur arrivée.

<sup>1</sup> De Martens-Geffcken, i. 53.

<sup>2</sup> This expression means that the agents of the first class are considered as representing the person of their sovereign, although they do not receive all the honours due to the sovereign himself. Their privileges were originally founded on the supposition that they alone were competent to carry on negotiations with the sovereign himself. But this has no real signification, because they deal, as a rule, only with the Minister for Foreign Affairs. It is sometimes supposed that an ambassador can demand access to the person of the sovereign at any time, but this is not the case, as the occasions on which the ambassador can speak with the sovereign are limited by the etiquette of the court to which he is accredited. Whether the Ambassadors of the United States can be said to have a "representative character" is highly doubtful, since they do not represent the President, but the United States. It is not customary in that country to issue new letters of credence on the inauguration of a President (de Martens-Geffcken, i. 57 ; Nys, *D.I.*, 344 ; Calvo, iii. 185 ; Wheaton, *I.L.*, 326 ; Moore, *Dig.*, iv. 463).



Le présent règlement n'apportera aucune innovation relativement aux représentatifs du pape.<sup>1</sup>

Art. 5. Il sera déterminé dans chaque État un mode uniforme pour la réception des employés diplomatiques de chaque classe.

Art. 6. Les liens de parenté ou d'alliance de famille entre les cours ne donnent aucun rang à leurs employés diplomatiques.

Il en est de même des alliances politiques.

Art. 7. Dans les actes ou traités entre plusieurs puissances qui admettent l'alternat, le sort décidera, entre les ministres, de l'ordre qui devra être suivi dans les signatures.

Le présent règlement sera inséré au protocole des plénipotentiaires des huit puissances signataires du traité de Paris, dans leur séance du 19 mars 1815.

(Suivent les signatures des plénipotentiaires d'*Autriche, d'Espagne, de France, de la Grande-Bretagne, de Portugal, de Prusse, de Russie, et de Suède.*)

§ 272. Addition made at the Congress of Aix-la-Chapelle by the plenipotentiaries of the five Great Powers, at their meeting of November 21, 1818:—

“ Pour éviter les discussions désagréables qui pourraient avoir lieu à l'avenir sur un point d'étiquette diplomatique que l'annexe du recès de Vienne par laquelle les questions de rang ont été réglées ne parait pas avoir prévu, il est arrêté entre les cinq cours que les ministres-résidents accrédités auprès d'elles formeront, par rapport à leur rang, une classe intermédiaire entre les ministres du second ordre et les Chargés d'Affaires.”

<sup>1</sup> The nuncio to Roman Catholic countries was accorded the position of *Doyen* of the Diplomatic Body. *Internonce apostolique* (see § 270) was sometimes employed to denote a Papal minister of the second class. The English official interpretation of the above Art. IV. was in 1856 as follows: “ It is intended that if by the invariable custom of any court the representative of the Pope had at the time of the Congress been allowed to take precedence of all other diplomatic agents of the same class, without reference to the date of his arrival, that custom should not be affected by the new regulation.”

(*Vide* Protocole de la Conférence du 21 novembre 1818.)<sup>1</sup> It was signed Metternich, Wellington, Nesselrode, Richelieu, Hardenberg, Capo D'Istria, Castlereagh, Bernstorff, *i.e.* in no regular order.)<sup>2</sup>

§ 273. It appears from the foregoing that on neither of these two occasions did the plenipotentiaries act in conformity with what they had laid down in Article 7 of the Vienna regulation, but signed in the alphabetical order, according to the French language, of the names of the states they represented, or else *pêle-mêle*. The former is the modern usage in similar cases.

§ 274. A question of precedence sometimes arises, which was not decided by the preceding regulations—namely, what is to be the order of seniority when the death of the sovereign or a change in the form of government necessitates the presentation of new credentials by diplomatic agents already accredited. Further remarks on the subject of precedence will be found in Chap. XXIII.

§ 275. Formerly it was the practice of some governments to accredit representatives with the title of “agent and consul-general” or “commissioner and consul-general,” and these may be regarded as forming a fifth class. Thus, Great Britain was represented by an agent and consul-general in Serbia till 1879, Roumania till 1880, Tunis till 1881, Siam till 1885, Bulgaria till 1908, and Zanzibar till 1913. In all these cases, except that of Siam, the country in question was a vassal-state. In Egypt, a vassal-state of Turkey till 1914, the representatives of the Powers were “agent and consul-general.”<sup>3</sup> Legally they were consul-general with a *béat* from the Porte. But for a long time the title of agent (or diplomatic agent) had been recognized. Most of the great Powers gave local diplomatic rank to their

<sup>1</sup> See Chap. XXV, § 462.

<sup>2</sup> De Martens-Geffcken, i. 54; Calvo, iii. 183 n.

<sup>3</sup> *Almanach de Gotha*.

agents. Thus the Russian was envoy extraordinary and consul-general. Many of the others had also the honorary rank of envoy and minister, minister-resident or chargé d'affaires. But these titles did not affect precedence, which was regulated by seniority only, according to the date of arrival in Egypt. In Morocco the position is now much the same, and the agents rank according to seniority, no matter whether they are chargé d'affaires in absence of a minister or not. Fifty years ago Holland was represented in Japan by a consul-general and political agent. It may, however, be concluded that this class of diplomatic agent was, as a rule, appointed only to states which were not fully sovereign.

§ 276. Ullman says :<sup>1</sup> " In 1875 a dispute about relative rank arose at Belgrade between the French Consul-general and diplomatic agent Debains and the German consul-general v. Rosen, which was decided by the Servian Government in favour of the former.<sup>2</sup> The German Government recognized in the designation ' diplomatic agent ' only an honorary title ; the right of receiving diplomatic representatives belonged only to the Suzerain. Eventually the affair was decided in the latter sense ; the consuls appointed to semi-sovereign states with the title diplomatic agent possess merely the character of consuls." But elsewhere he states that : " In die vierte Klasse der diplomatischen Agenten gehören überhaupt alle übrigen diplomatischen Agenten ohne Rücksicht auf ihren weiteren Titel (die bei dem auswärtigen Amte beglaubigten Minister-residenten, einfachen Residenten und Konsuln, wenn sie, wie dies im Orient der Fall ist, als diplomatische Agenten fungieren.)"<sup>3</sup> The English Foreign Office List shows

<sup>1</sup> 166 n.

<sup>2</sup> Holtzendorf states that the German Government thereupon recalled Dr. Rosen, and induced the Powers to agree that consuls-general in semi-sovereign states, irrespective of their title, have no diplomatic character at all (iii. 621).

<sup>3</sup> p. 172.

that an agent and consul-general is regarded as a diplomatic agent in the ordinary sense of that term.

§ 277. The so-called "representative character" of the Ambassador extends no farther, as Leibniz says, than

"*quantum fert ratio aut consuetudo.*" It gives him no right to go behind the back of the Minister for Foreign Affairs, and negotiate with the Sovereign direct. As Prince Bismarck rightly observed, no envoy nor ambassador has the right of demanding a personal interview with the Head of the State, nor can the Sovereign in any State which possesses a parliamentary constitution negotiate apart from the advice of his responsible minister. Only in practice, and especially in the case of absolute rulers, has the easier access to the sovereign which an Ambassador enjoys, any political importance, as was perceived in 1853 in the personal negotiations of Lord Stratford with the Sultan, and of the Prussian ambassador Graf v. d. Goltz with Napoleon III in 1866. The same ground is opposed to it from the side of the State to which he is accredited. If a Minister for Foreign Affairs has to endure that what he has settled with an envoy is upset by conversations of the latter with the sovereign, no steady (*folgerichtige*) policy is possible. Frederick the Great refused to have any ambassadors, because they were an inconvenience.<sup>1, 2</sup>

<sup>1</sup> Holtzendorf, iii. 641.

<sup>2</sup> But he by no means refused to discuss business with either envoys or ambassadors when it suited him.

## CHAPTER XVII

### EXTRATERRITORIALITY

§ 278. DEFINITION. Extraterritoriality (or extraterritoriality) is the term used to denote the immunities accorded to foreign sovereigns, and to diplomatic agents, their families and staff, as well as to foreign residents in certain non-Christian countries in virtue of special treaty provisions. The use of the term, like that of "diplomacy," is more modern than the application of the principle. Grotius<sup>1</sup> says: "The common rule, that he who is in a foreign territory is subject to that territory, does, by the common consent of nations, suffer an exception in the case of ambassadors; as being, by a certain fiction, in the place of those who send them (*senatus faciem secum attulerat, auctoritatem reipublicæ*, ait de legato quodam M. Tullius), and by a similar fiction they are, as it were, *extra territorium*; and thus, are not bound by the Civil Law (*civili jure*) of the People among whom they live." In this passage *jus civile* is to be taken as meaning the territorial, or municipal, law of the state, as opposed to the law of nations, *jus gentium*. The word *extraterritorialitas* was used by Wolff in 1749, and G. F. de Martens, writing towards the end of the eighteenth century, converted it into *extritorialité* and *Exterritorialität* in French and German respectively.<sup>2</sup>

The term is not to be strictly interpreted according to its literal meaning; it is a metaphor, not a legal fact,

<sup>1</sup> Whewell's edition, ii. 209 (Book II. chap. xviii. § 4. no. 5). See also Nys, *Droit International*, ii. 368.

<sup>2</sup> Nys, 371.

and it is better, therefore, to drop it in considering what are the immunities of the different classes of persons enumerated.<sup>1, 2</sup>

<sup>1</sup> Hall, 6th edit., p. 166.

<sup>2</sup> Thus it is sometimes pretended that the residence of a diplomatic agent is part of the territory of his own country. A public armed ship lying in a foreign port, to which it is admitted as a matter of courtesy, is held to be virtually part of the territory of the sovereign whose flag it flies. Attempts have often been made to extend this fiction to private ships, and to derive from this extension a claim to the inviolability of merchant ships on the high seas, but as they clearly are not endowed with inviolability while in a foreign port, or in territorial waters, but are subject to the local jurisdiction, the fiction cannot in their case be maintained.



## CHAPTER XVIII

### IMMUNITIES OF DIPLOMATIC AGENTS

§ 279. Inviolability—§ 280. Couriers—§ 281. Case of Gyllenborg and Görtz—§ 282. Cellamare—§ 283. Bruneau—§ 284. Independence—§ 285. Immunity from local criminal jurisdiction—§ 286. Case of Pantaleon de Sa—§ 287. Case of Italian secretary who committed suicide in London—§ 288. Immunity from local civil jurisdiction—§ 289. Exceptions—§ 290. Statute of 7 Anne, c. 12—§ 291. Practice in other countries—§ 292. Case of the Baron de Wrech—§ 293. Berlin houseowner against United States Minister in 1839—§ 294. Magdalena Steam Navigation Co. *v.* Martin—§ 295. Republic of Bolivia Exploration Syndicate—§ 296. Taylor *v.* Best—§ 297. Immunities of wife and children, members of the mission and servants—§ 298. Case of Carlos Waddington—§ 299. Tchitchérine—§ 300. Errembault de Dudzele—§ 301. Jurisdiction of the agent over members of the suite—§ 302. Marriages in diplomatic house—§ 303. Early attempts to exercise criminal jurisdiction—Sully's case—§ 304. Wartensleben—§ 305. Lucien Bonaparte—§ 306. Distinction between offences committed within and without envoy's residence—§ 307. Case of Sun Yat Sen—§ 308. Evidence of diplomatic agent, mode of obtaining—§ 309. Case of refusal by Netherlands minister—§ 310. United States service regulation—§ 311. Opinions of text-writers.

#### § 279. *Inviolability.*

This term implies a higher degree of protection to the person of a diplomatic agent and his belongings than is accorded to a private person. It is the source of the exemption from the local criminal and civil jurisdiction, as well as of other exemptions, which will be found treated of further on. In some countries, especially France, Germany and Great Britain,<sup>1</sup> special legislation

<sup>1</sup> Every one is guilty of a misdemeanour who, by force or personal constraint, violates any privilege conferred upon the diplomatic representatives of foreign countries by the Law of Nations, as collected by Her Majesty's courts from the practice of nations, and the authority of writers thereon.

Everyone commits a misdemeanour who sets forth or prosecutes or

is provided to ensure this inviolability. It extends to the wife and children of the diplomatic agent, to official and non-official members of the mission, to the servants of the agent and of the other persons here enumerated, to his house, carriages, movable property belonging to him as agent (including, of course, Government furniture), archives, documents of whatever sort, and to his official correspondence carried by his couriers or messengers employed by his Government. It is doubtful however, whether his official correspondence through the post office would escape examination in countries where that practice is still carried on. In 1807 the instructions given by Napoleon to Savary said, " toutes les lettres qu'il fera passer par la poste, il aura besoin de les écrire comme si elles devaient être lues par l'Empereur Alexandre " (F. de Martens, *Recueil*, xiv. 3). The State archives of every country doubtless possess, in the shape of intercepted despatches, evidence that it was quite common in the eighteenth century, and there seems to be no reason to suppose that it has been altogether abandoned.

Of course, an agent cannot expect to enjoy inviolability when he commits an illegal act necessitating the immediate application of personal restraint ; for instance, if curiosity induced him to break through the cordon of police drawn round a burning building, or if he exceeded the legal limit of speed when motoring on a high road or through the streets.<sup>1</sup> It may be generally said that the condition of his personal inviolability is the correctness of his own conduct, just as if he were a private individual.

The right in question attaches from the moment

executes any writ or process whereby is arrested or imprisoned the person of any ambassador or other public minister of any foreign prince or state, authorized and received as such by Her Majesty or any domestic servant of any such ambassador or minister, registered as such in the office of a principal Secretary of State, or in the Office of the Sheriff of London and Middlesex (Stephens, *Digest of the Criminal Law*, 5th edit., Arts. 100 and 101.)

<sup>1</sup> See cases quoted in J. W. Foster's *Practice of Diplomacy*.

that he has set foot in the country to which he is sent, if previous notice of his mission has been imparted to the Government of the receiving State, or, in any case, as soon as he has made his public character known by the production either of his passport or of his credentials. It extends, at least so far as the State to which he is accredited is concerned, over the time occupied by him in his arrival, his sojourn and his departure.

It is not affected by the breaking out of war between his own country and that to which he is sent.<sup>1</sup>

In the case mentioned in the immediately preceding paragraph it is the duty of the Government to which he was accredited to take every precaution against insult or violence directed against him or any of the persons, whether belonging to his family or suite, covered by his right of inviolability, or against his residence or baggage, and to escort him to the frontier or to his place of embarkation with the most careful courtesy. To place him under military guard or to threaten him with the use of armed force if he looks out of the window of the railway carriage in which he is travelling is a gross violation of international decency.

#### § 280. *Couriers.*

“ For the discharge and expedition of his business and negotiations an uninterrupted exchange of correspondence with his own Court or government is necessary to the envoy. He employs messengers, whom he despatches to convey information to his sovereign, or to his colleagues at other Courts with the least possible delay.

“ The correspondence of an envoy sent through the ordinary post comes under the special protection of International Law, the messengers despatched by him to his Court and *vice-versâ* enjoy, in times of peace, inviolability for their person and the despatches they carry—complete inviolability, even in the territory of a third State. They must be distinguished by some external sign, and carry proper passports. To such messengers must be accorded every possible facility for pursuing their journey. Articles which they carry with them, as well as the correspondence in their charge, are not subject

<sup>1</sup> Phillimore, ii. 172.

to the regulations affecting the property of private persons, so long as they do not forfeit their privilege by its misuse ; as, for instance, a Turkish messenger, in 1819, who had declared at Strassburg that he was only carrying despatches, was found to be in possession of fifteen bales of Cashmere shawls, valued at 400,000 francs.”<sup>1</sup>

Copies of the ciphered telegrams of diplomatic agents are, of course, accessible to the telegraphic administrations of the States where they reside, and of the territories across which they are transmitted.

§ 281. *Gyllenborg and Görtz.* Baron Jean Henry de Görtz, up to the end of 1716 in the service of the Bishop of Lübeck, also acting as a secret agent of Charles XII of Sweden, had conceived a plan for reconciling his master with Peter the Great, with the object of replacing Stanislas Leczinski on the throne of Poland, recovering Bremen and Verden from Hanover and depriving George I of the throne of Great Britain in favour of the Pretender. He proposed that Charles XII should surrender to Peter Livonia, Ingria, Carelia and perhaps even a part of Finland, in order to be better able to recover what he had lost in Germany, and make a descent upon Scotland, whilst the Jacobite party acted in England. Instructions were sent to Count Gyllenborg, Swedish minister in London, and while the latter entered into consultation with the leading Jacobites, Görtz opened negotiations in Holland, France, Spain and even in England for funds with which to prosecute his designs. Suspicion had been aroused by his relations with the English Jacobites, and his movements while in Paris, where he had gone with a view to detaching the Regent from his understanding with England, had attracted the notice of Lord Stair, the British ambassador. An unforeseen accident revealed the plot. A Swedish packet carrying important letters relating to the conspiracy was driven by a storm to take refuge in a Norwegian port, and the Danish

<sup>1</sup> Schmelzing, ii. 224.

Government communicated to the King of England the letters found on board. The first result was the arrest of Gyllenborg on the night of February 9, 1716/17 and the seizure of his papers. This measure was immediately made known to the diplomatic body in London by a circular from James Stanhope, Secretary of State for the Southern department, and the intercepted letters, as well as those found among Gyllenborg's papers, were printed and distributed among the foreign ministers as well as sold to the public.<sup>1</sup> The former protested against Gyllenborg's arrest, as a violation of the Law of Nations,<sup>2</sup> and the Spanish ambassador, Marquis de Monteleon, replied to Stanhope embodying this opinion. Hall says that they afterwards withdrew their protest.<sup>3</sup> The British Government instructed Leathes, the Minister Resident at the Hague, to ask for the arrest of Görtz, who by this time had betaken himself thither; he had however left for Amsterdam, whence he fled to Arnhem, where he was finally captured. As soon as the King of Sweden learnt of the arrest of Gyllenborg and Görtz, he ordered a similar measure to be taken with respect to Jackson, the British Minister Resident at Stockholm, and forbade Rumpf, the Dutch Minister at Stockholm, to appear at Court. Peter the Great, who was then at the Hague, where he had several times secretly conferred with Görtz, caused Wesselowsky, his Secretary of Embassy in London, to offer assurances to the British ministry of his own innocence of all participation in the schemes of the king of Sweden, his particular enemy.<sup>4</sup> Charles XII also disavowed the proceedings of his two agents.<sup>5</sup> It was finally arranged through French media-

<sup>1</sup> The order to print is dated Feb. 19, 1716/17. The letters begin with one from Baron Sparre, Paris, Sept. 25, 1716, to Gyllenborg, and end with one from Gyllenborg of Feb. 10, 1717, to Görtz, addressed to the Hague. The perusal of the correspondence proves quite clearly that Gyllenborg was guilty of conspiring with English Jacobites against the Sovereign to whom he was accredited. De Martens does not reproduce it.

<sup>2</sup> C. de Martens, i. 83.

<sup>4</sup> C de Martens, 107.

<sup>3</sup> Sixth edition, 171 n.

<sup>5</sup> *Ibid.*, 121.



tion that Gyllenborg should be exchanged for Jackson, and Görtz was set at liberty by the Estates of Gelderland. The latter, after his return to Sweden, was placed on his trial on various political charges, and condemned to death.

§ 282. *Cellamare Case.* The prince of Cellamare, who in 1715 was appointed ambassador extraordinary at Paris by Philip V of Spain, was employed by Cardinal Alberoni in 1718 to conduct a conspiracy having for its object to deprive the duc d'Orleans of the Regency and to transfer it to the King of Spain.<sup>1</sup> Knowledge of this affair was communicated to the Abbé Dubois, then Secretary of State in the Department of Foreign Affairs, by a woman with whom he maintained relations, and also by a copyist who worked for Cellamare. The plan, comprised in a number of documents, was found in the possession of two young Spaniards as they were passing through Poitiers on their way to Madrid. Cellamare with great audacity went to the Minister of War to claim the restitution of his packet of letters, whereupon the latter and Dubois carried him back to his house, and having examined his papers in his presence, sealed them up. At the same time a guard of soldiers had been placed at the doors, with instructions to keep him under surveillance. Cellamare addressed a circular to his colleagues of the diplomatic body, complaining of what he called a violation of the Law of Nations, but none of them cared to take up his cause. On his part, the Regent also caused a circular to be addressed to them, stating what had been discovered from the papers seized at Poitiers, and that it had been found necessary to seal up Cellamare's papers. The following day the seals were removed, the papers examined and three cases taken away to the Louvre, to be kept there until the King of Spain should send to fetch them. The guard of soldiers was then removed and a single gentleman of the royal household left in charge of the ambassador.

<sup>1</sup> C. de Martens, i. 139.



Two days later the latter was conveyed to the castle of Blois, to be kept there until the duc de St. Aignan, French ambassador at Madrid, should have arrived safely in France. The latter, having meanwhile given offence to Cardinal Alberoni, had been ordered to quit the capital in twenty-four hours; and after he had started, news having been received of the occurrences at Paris, orders were sent to arrest him and bring him back to Madrid. But the French ambassador, not feeling reassured as to the intentions of Alberoni, on reaching the frontier of Navarre with his wife, mounted with her on mules, leaving the valet and lady's maid in their coach, who were accordingly brought back in triumph. As soon as information was received at Paris of St. Aignan's safe arrival at Bayonne, orders were despatched to conduct Cellamare to the frontier. A manifest was published on January 8, denouncing the conduct of the Spanish Government, which was followed the next day by a formal declaration of war. An army was marched into Spain in the following year, but hostilities were averted by the King of Spain proposing a truce, and finally, on February 17, 1720, Spain acceded to the quadruple alliance formed by Great Britain, France, the Emperor and the States-General.

Cellamare's papers were eventually given up to his own Government.<sup>1</sup>

§ 283. *Arrest of Bruneau*, in 1605, secretary to the embassy of Spain, who was found to be conspiring with one Mairargues to deliver the port and town of Marseilles to the Spaniards, in time of peace. The Ambassador Don Balthazar de Zuñiga complained to Henri IV, who justified the arrest. They indulged in a series of mutual reproaches and accusations of bad faith and underhand intrigue. Mairargues was condemned to be beheaded and quartered. The case was proved against the Secretary, but the King stopped the trial, and handed

<sup>1</sup> *Recueil des Instructions, Espagne*, ii. 383.

him over to the ambassador on condition that he should be sent back to Spain. It was shortly afterwards discovered that the French ambassador at Madrid had been in secret communication with the people of Pampeluna, to the disadvantage of the Spanish King.<sup>1</sup> So it was a case of "Six of one and half-a-dozen of the other."

§ 284. *Independence.*

"We have seen that international law regards the inviolability of the Head of a Mission as the chief attribute of the diplomatic character; *absolute independence* is, in principle, its corollary, as being in itself the consequence of the independence of the nation of which the public minister is the mandatory. But in order that this independence may be preserved fully and entire, it is necessary for the diplomatic agent to abstain from everything that could impair it. He will not accept, and still less will he solicit, from the sovereign at whose court he resides, any court function, any public or secret pension, no matter on what pretext or under what name: honour and loyalty equally render this a duty. He must not either, without the express authorization of his principal, accept any dignity, title or decoration, kindness or favour whatsoever from that sovereign or from any foreign prince.

"When, as an exception, a foreign minister is a *subject* of the State to which he is accredited, and his principal consents to his continuing to be regarded as such, he remains subject to the laws of the state in all matters not connected with his diplomatic mission; but, although a subject of the Court at which he resides, he must, as far as his character of public minister is concerned, enjoy the independence and all the other immunities and prerogatives accorded to the character with which he is clothed, during the whole period of his mission, unless the sovereign has consented to receive him only under the express condition that he shall continue to be regarded as his subject."<sup>2</sup>

Thugut, who rose to be the director of the foreign policy of Austria at the end of the eighteenth century in succession to Prince Kaunitz,<sup>3</sup> while a mere clerk in

<sup>1</sup> Flassan, ii. 233, C. de Martens, ii. 373, and Callières, 171.

<sup>2</sup> De Martens-Geffcken, i. 88.

<sup>3</sup> From 1794 onwards.

the Austrian Chancery received a pension from Louis XV, in return for the secret information which he used to furnish to that monarch. In 1769 he was sent to Constantinople as Resident, where he had been dragoman from 1754 to 1756, and while there continued his traitorous relations with the King of France. In 1772 he represented Austria at the Congress of Fokchany (§ 454). But though he continued to receive money from Louis XV, he served the political objects of Austria.<sup>1</sup>

§ 285. *Immunity from the local Criminal Jurisdiction.* If the diplomatic agent commits an ordinary crime, he cannot be arrested nor tried nor punished by the local courts. His Government must be asked to recall and punish him. But a political offence against the State to which he is accredited will justify the latter in seizing his person and delivering him over to the authorities of his own country. This may, however, only be done in a case of urgent danger. His immunity from criminal process is provided for by the legislation of most countries.

Cases of conspiracy against the Head of the State are : Mendoza in 1584, l'Aubespine in 1585, Bruneau in 1605, Le Bas in 1654, Gyllenborg in 1717, Cellamare in 1718.<sup>2</sup>

§ 286. Connected with the right of members of a mission to be exempt from the local criminal jurisdiction is the famous case of *Pantaleon de Sa*.

On the evening of November 21, 1653, a dispute occurred at the New Exchange in the Strand, between Pantaleon de Sa y Menezes, brother of the Portuguese ambassador, and two others of the ambassador's family (*i.e.* household), and Colonel Gerhard, in which the latter was stabbed. On the following night the Portuguese

<sup>1</sup> A. Sorel, *La Question d'Orient au XVIII<sup>e</sup> Siècle*, 156.

<sup>2</sup> For the last two cases see §§ 281, 282, Bruneau in § 283. Those of Mendoza, l'Aubespine and Le Bas are narrated further on in Chap. XXIV.

returned, and shot a Mr. Greneway, and wounded several other persons. Some of the assailants were captured by the horse-guards, of whom a party beset the ambassador's house, and obliged him to surrender his brother and one of his companions who had taken part in the fray. On July 5, 1654, de Sa and two others were put on their trial in the King's Bench. He pleaded that he was not only the ambassador's brother, but had a commission to himself to be ambassador when his brother should be absent, and that by the Law of Nations he was privileged. The court found that the plea of privilege was not good, and the following day he was put on his trial before a jury of six Englishmen and six aliens. The jury found him and four more guilty of murder, and they were sentenced to be hanged. One of the prisoners, an English servant of de Sa, was hanged at Tyburn. De Sa was beheaded on Tower Hill, the sentence of hanging having been commuted to decapitation. The rest of the convicted men were reprieved.

It is clear that de Sa was not entitled to the privilege of an ambassador, as he had only a dormant commission, and that his plea of relationship to the ambassador was not good.<sup>1</sup>

§ 287. The *Solicitor's Journal* for February 19, 1916, reports a curious claim on the ground of diplomatic immunity from the local criminal jurisdiction, in the case of the first secretary of the Italian embassy, who was found shot in his bedroom at a London hotel. It was *primâ facie* the duty of the coroner to hold an inquest into the cause of death, but the Italian ambassador appears to have objected. As the jurisdiction of

<sup>1</sup> *Somers Tracts*, Whitelocke's *Memorials*, and Zouch's *Solutio quæstionis de Legati delinquentis competente iudicio*, republished in 1717, with an English translation, on the occasion of the proceedings against Count Gyllenborg, are the chief authorities quoted by various writers. Carlyle's account is based on Whitelocke, 550, 577. The best account is in the *State Trials*, v. 461. The *British and Foreign State Papers*, xli, 1111, gives a law of New Granada, passed at Bogotá, Mar. 26, 1851, relative to the immunities of the Diplomatic Agents of foreign countries.

the coroner in such a case, it is pointed out, is clearly criminal, "the well-settled rule of International Law—which exempts a diplomatic envoy and his suite from civil or criminal process—excludes the jurisdiction over the dead body of any member of an ambassador's suite."

§ 288. *Immunity from the local Civil Jurisdiction.* The diplomatic agent is not liable to the local civil jurisdiction in such a manner as to impede the exercise of his diplomatic functions, nor can the property belonging to and used by him in his official capacity be seized. Real property belonging to him is subject to the local jurisdiction on the principle of the *lex loci rei sitæ*, with the exception, however, of the house which he occupies as his embassy house or legation, if it should happen to be owned by him. He must also comply with ordinary police and sanitary regulations. See also post § 321.

A diplomatic agent will do well to inform himself of all local legislation respecting diplomatic immunities.

§ 289. There are, however, exceptions to this rule of exemption from civil jurisdiction.

1. When he submits to the local jurisdiction (a very unlikely case). Some writers insist that the consent of his Government is necessary, and so it may be, as between him and them. But the local court is not bound to inquire whether he has obtained their consent. As far as the court is concerned his submission is sufficient. He can only be held to have submitted to the jurisdiction so far as that the judgment of the court does not interfere with his personal liberty, or the property exempted in virtue of his office.<sup>1</sup>

2. If he has chosen to bring an action himself. In this instance he merely obliges himself to plead to a cross-action, and, like a sovereign in similar circumstances,<sup>2</sup> to comply with the rules of the court. The plaintiff ambassador makes himself liable to the *counter-*

<sup>1</sup> Hall, 172.

<sup>2</sup> Hall, 173.



*demands*, which are a mode of defence, and to condemnation in costs, if the suit fails. On the other hand, if the suit succeeds, and the defendant prosecutes an appeal, which is also a mode of defence, the ambassador cannot decline the jurisdiction of the superior court.<sup>1</sup>

3. All private property except what is necessary for the exercise of his functions is subject to the local jurisdiction. Thus he is subject to actions for breach of contract ; if he goes into trade, or becomes a shareholder in a local company, his property is liable to seizure and condemnation at the suit of his creditors ; if he acts as executor he is liable to suits brought against him in that capacity.<sup>2</sup> “ But in any suit or seizure intended to bind them [*i.e.* land or goods held by him in any of those capacities] through the action of the local courts, the fiction of the minister’s exterritoriality must be kept up by proceeding against him in the form usually employed against any other absent person reputed to be out of the country.”<sup>3</sup>

The above statement is, however, rather too sweeping, inasmuch as, even if a judgment were obtained against a foreign diplomatist in a suit involving other than real property, it could not be executed.

§ 290. The statute of 7 Anne, c. 12,<sup>4</sup> however, declares that

“ all writs and processes whereby the goods or chattels ” of a diplomatic agent “ may be distrained, seized or attached shall be deemed and adjudged to be utterly null and void to all intents, constructions and purposes whatever ” ;

and as this statute does not exclude such an envoy as embarks on mercantile ventures from the benefit of the Act, the English courts will grant exemption to foreign envoys even in such cases.<sup>5</sup> See the case against

<sup>1</sup> Phillimore, ii. 195.

<sup>2</sup> Hall, 174.

<sup>3</sup> Hannis Taylor, *Treatise on Internat. Public Law*, 340.

<sup>4</sup> The text of the statute in *Brit. and Foreign State Papers*, i. 993.

<sup>5</sup> Oppenheim, i. 465. Cases arising under this statute are mentioned in Phillimore, ii. 198.



Monsieur Drouet, Secretary of Legation to the King of the Belgians, one of the directors of a society formed in Belgium and London for working the Royal Nassau Sulphate of Baryta Mines, quoted by Phillimore, ii. 202-5.

The United States statute which corresponds to the statute of 7 Anne provides that

“ whenever any writ or process is sued out or prosecuted by any person in any court of the United States, or of a state, or by any judge or justice, whereby the person of any public minister of a foreign state or prince, authorized and received as such by the President, or any domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized or attached, such writ or process shall be deemed void.”<sup>1</sup>

In France, the law and practice are the same, and a diplomatic agent<sup>2</sup> who was about to quit his post without paying his local creditors would no longer be subjected to the treatment experienced by the Baron von Wrech, Minister of Hesse-Cassel, who was refused his passports until they had been satisfied (see § 292).

§ 291. In Austria, the civil code merely confers on a diplomatic agent whatever immunities are established by International Law—a somewhat uncertain criterion.<sup>3</sup> The German code uses similar language, and it is inferable from language used in 1844 by Baron von Bülow, in writing to the United States minister, Mr. Wheaton, that the widest possible interpretation would be given to such a provision (see § 293). In Spain, an ambassador is exempt from being sued for debts incurred before the commencement of his mission, but is deprived of this immunity during its continuance.<sup>4</sup> In Russia, a claim against a diplomatic agent must be presented to the People's Commissar for Foreign Affairs.<sup>5</sup> As the privilege

<sup>1</sup> Hannis Taylor, 339.

<sup>2</sup> Phillimore, ii. 207.

<sup>3</sup> *Ibid.*, 208.

<sup>4</sup> De Castro y Casaleiz, i. 832.

<sup>5</sup> Phillimore, ii. 208.

is accorded to the suite on account of the ambassador, and not on account of his sovereign, it may be waived by the former ; and it was waived by the ambassadors at the Congresses of Münster and Nijmegen. But it cannot be waived in the case of any subordinate officer of the embassy or legation appointed by the sovereign himself.<sup>1</sup>

As a diplomatic agent ought carefully to avoid giving rise to any questions touching the extent of his immunities between his own Government and that to which he is accredited, the obvious recommendation to make is that he should not acquire any kind of personal interest or accept any duty such as those mentioned. It will be better, for more reasons than one, to eschew all speculations or investments of money, of whatever nature, in the country where he is serving, and to pay his local tradesmen's bills with regularity and despatch.

§ 292. *Creditors of Diplomatic Agent. Case of Soltikow at Paris in 1762.* See F. de Martens, *Recueil*, XIII, 122. *Case of the Baron de Wrech in 1772.*<sup>2</sup> In 1772 the Baron de Wrech, minister plenipotentiary of the Landgrave of Hesse-Cassel, being recalled, was on the point of leaving Paris without paying his debts, when the Duc d'Aiguillon, at the request of certain of his creditors, refused him his passports. De Wrech applied to his colleagues for their assistance, who accordingly addressed a joint note to the Duke, protesting against the service of a writ upon one of the foreign ministers, on the ground that it was contrary to the Law of Nations and to the liberty, that was necessary for them to possess, of quitting the Court to which they were accredited whenever circumstances might require it, and they appealed to the justice and equity of His Most Christian Majesty to protect their rights and privileges.

The Duke replied that the circumstances of the case which had given rise to the protest of the diplomatic

<sup>1</sup> Phillimore., 197.

<sup>2</sup> Ch. de Martens, ii. 110.

body were such that it could not lead to any infringement of their rights and privileges, and that the King had charged him to give the assurance that he would always be most scrupulously careful to maintain the immunities attaching to the character of diplomatic representative (*ministre public*).

Subsequently the French Ministry communicated to the members of the diplomatic body a long memorandum setting forth the official view of the question. The following summary gives the more important portions of this document—

“ The immunities of diplomatic representatives are based on the principle that nothing should be done to disturb them in the exercise of their official functions, and there are limits to the immunity known as exemption from civil jurisdiction, *e.g.*, in respect of immovable property owned by a minister in the country to which he is accredited, or of a contract entered into before a notary-public. A minister cannot take advantage of his privilege in order to avoid paying debts contracted by him in the country where he resides, because such evasion would be contrary to the intentions of his sovereign, while it could not be intended by the sovereign to whom he is accredited that his subjects should be subjected to loss in consequence of the public character of the diplomat. The privilege of diplomatists only concerns what they possess in their official character, and without which they could not exercise their functions. It is a rule admitted by all the courts that a diplomatic representative ought not to leave the country without satisfying his creditors. The only question, therefore, that arises is : when a minister neglects the performance of this duty, what is to be done ?

“ At Vienna, the marshalate of the empire claims jurisdiction over everything not connected with the person of the ambassador and his functions, to an extent sometimes regarded as difficult to reconcile with the generally received maxims. This Court watches over the payment of debts contracted by ambassadors, especially at the moment of their departure. Of this an example was seen in 1764, when the effects of Count Czernicheff, Russian ambassador, were detained until Prince Liechtenstein became surety for him.

“ In Russia, a diplomatic representative has to publish three notices of his intended departure. The children

papers and effects of M. Bausset, French ambassador, were detained until the King undertook to see to the payment of the ambassador's debts.

"At the Hague, the Council of Holland claims jurisdiction in those states where the interests of subjects are prejudiced. In 1688 a writ was served on a Spanish ambassador in person, who complained; the States decided that the complaint was well founded, in so far that the writ ought to have been served on one of his suite.

"At Berlin, in 1723, the Baron de Posse, minister of Sweden, was arrested and kept in custody because he refused to pay a saddler's bill, in spite of repeated warnings from the magistrate.

"At Turin, an ambassador's coach was stopped in the reign of Emanuel. The Court of Turin cleared itself of this act of violence, but no one objected to the proceedings which had been taken to condemn the ambassador to pay his debts."<sup>1</sup>

Grotius, Bk. II. cap. xviii. § ix., in Barbeyrac's version, is quoted to the effect that "if an ambassador has contracted debts and has no immovable property in the country, he must be told politely to pay; if he refused, he who sent him would be applied to, after which recourse would be had to the proceedings taken against debtors who are out of the jurisdiction.

"The most moderate opinion is that it is proper in all cases to abstain, as far as possible, from infringing on the decency which ought to surround his public character; but the sovereign is entitled to employ that kind of compulsion which causes no disturbance in his functions, and consists in prohibiting the ambassador from quitting the country until he has satisfied his engagements. It is in this sense that Bynkershoek advises the employment against ambassadors of proceedings which imply rather a prohibition than an order to do such or such a thing. It is then a simple prohibition, and no one would venture to maintain that it is unlawful to defend oneself against an ambassador, who ought not to disturb the inhabitants by using violence and carrying off what belongs to another. This maxim is all the more appropriate, when particular and aggravated circum-

<sup>1</sup> Aiguillon says: "Nothing will be said about England, where the spirit of legislation, confined to the letter of the law, admits neither of tacit convention nor of presumption, and where the danger of a positive law in a matter so delicate has hitherto prevented the prerogatives of public ministers from being legally fixed?" Apparently he had not heard of the Act 7 Anne, cap. 12.

stances charge the minister with bad faith and reprehensible proceedings. When he thus violates the sacredness of his character and public security, he cannot demand that others respect him. It is sufficient to recall the conduct of the Baron de Wrech since his arrival at Paris, and above all during the last eight months. The indecent methods he had adopted to procure money having been stopped, he gave himself up to all sorts of proceedings, which consideration for his position prevent me from characterizing. It is enough to remark that everything conduces to the belief that he had formed the design of disappointing his creditors by quitting the kingdom, and this circumstance is sufficient to authorize taking against him the same measures that would be taken if he had in effect left the kingdom, after having laid aside his character by presenting his letters of recall. The minister for Foreign Affairs caused him to be exhorted by the magistrate charged with the police, and himself exhorted him to do honour to his obligations. It was in consequence of these considerations that, on the repeated complaints of the creditors of the Baron de Wrech, the minister for Foreign Affairs thought fit to suspend the preparation of the passport he had asked for in order to leave the kingdom, until the intentions of his master the Landgrave could be ascertained through the minister who resides on the part of the King at his Court. In order to reconcile the protection which the King owes to his subjects with the consideration due to a diplomatic position (*caractère public*), and in order to discharge all the processes which the rules of the Law of Nations may dictate, the ministry for Foreign Affairs has informed the Landgrave of the conduct of his minister. That sovereign will have the less ground for objecting to the course pursued towards his minister in that he caused to be imprisoned, four or five years ago, the Count de Wartensleben, Dutch minister, in order to compel him to give account of a trust of which he was the executor. It is true that the action taken against the person of the minister was condemned, but the States-General did not contest the jurisdiction of the Landgrave, and, in the case of the Baron de Wrech, the principles which that sovereign (*prince*) has maintained will not allow him to shield his minister from the measures calculated to ensure the rights of the King's subjects, nor to deprive them of the only pledge they have of the execution of their agreements with him."

Flassan (vii. 98) remarks: "Telle fut la jurispru-



dence adoptée dans cette occasion. Néanmoins, cette jurisprudence n'a pas été suivie constamment, et la complaisance du ministre des affaires étrangères, comme la dignité du ministre endetté, peuvent la faire varier."

This memorandum was published in the *Gazette de France*, to the great annoyance of the Baron de Wrech. He complained to the Duke, but all the satisfaction he obtained was an assurance of his regret that a matter that ought to have been kept secret had found its way into print, and that he applauded the intention of the Baron to proceed against the publishers.

The passports of the Baron de Wrech were not delivered to him until the Landgrave of Hesse-Cassel had undertaken to meet the obligations of his minister.<sup>1</sup>

§ 293. *Case of House-owner against the United States Minister at Berlin in 1839.*

The Prussian Civil Code [then in force] declares that

"the lessor is entitled, as a security for the rent and other demands arising under the contract, to the rights of a *Pfandgläubiger*, upon the goods brought by the tenant upon the premises, and there remaining at the expiration of the lease."

The same code defines the nature of the right of a creditor whose debt is thus secured.

"A real right, as to a thing belonging to another, assigned to any person as a security for a debt, and in virtue of which he may demand to be satisfied out of the substance of the thing itself, is called 'Unterpfands-Recht.'"

Under this law the proprietor of the house in which the minister of the United States accredited at the Court of Berlin resided, claimed the right of detaining the goods of the minister found on the premises at the expiration of the lease, in order to secure the payment

<sup>1</sup> Schmelzing, ii. 231, remarks on this case that the proceedings of the French Government were "Unstreitig eine Verletzung des Völker-Rechts."



of damages alleged to be due on account of injuries done to the house during the contract. The Prussian Government decided that the general exemption, under the Law of Nations, of the personal property of foreign ministers from the local jurisdiction did not extend to this case, where, it was contended, the right of detention was created by the contract itself, and by the legal effect given to it by the local law. In thus granting to the proprietor the rights of a creditor whose debt is secured by hypothecation (*Pfandgläubiger*), not only in respect to the rent, but as to all other demands arising under the contract, the Prussian Civil Code confers upon him a *real right* as to all the effects of the tenant which may be found on the premises at the expiration of the lease, by means of which he may retain them as a security for all his claims derived from the contract. . . . The controversy having been terminated, as between the parties, by the proprietor of the house restoring the effects which had been detained, on the payment of a reasonable compensation for the injury done to the premises, the matter was further argued between the Prussian and American Governments, without their being able to come to an agreement on the point of law.<sup>1</sup>

§ 294. In the case of the *Magdalena Steam Navigation Co. v. Martin*, "the defendant, who was envoy extraordinary and minister plenipotentiary of Guatemala and New Grenada, was sued for a sum of £600 alleged to be due from him as a contributory in respect of shares held by him in the plaintiff company. The defendant pleaded to the jurisdiction, alleging his privilege as an ambassador. On demurrer it was held that the public minister of a foreign state accredited to the sovereign, having no real property in this country, and having done nothing to disentitle him to the privileges usually belonging to such public minister, could not be sued in an English court for a debt while he remained a public minister,

<sup>1</sup> Wheaton, 341-53; the author refers to an article by M. Foelix, in *Revue du Droit Français et Etranger*, ii. 31.

even though neither his person nor his goods might be touched by the suit."<sup>1</sup>

§ 295. The following recent case is taken by permission from *Law Reports*, 1 CH. 1914, p. 139—

*In re* Republic of Bolivia Exploration Syndicate, Limited,  
per Astbury, J.

Headnote.

Both under the common law and under the Diplomatic Privileges Act, 1708, a diplomatic agent accredited to the Crown by a foreign State is absolutely privileged from being sued in the English Courts, and any writ issued against him is absolutely null and void.

This diplomatic privilege can be waived, if at all, only with full knowledge of the party's rights, and (*semble*) with the sanction of his sovereign or (if he is of inferior rank to a minister plenipotentiary) of his official superior.

Except in cases like *Taylor v. Best*,<sup>2</sup> where the agent is merely joined as a formal defendant, it is doubtful if any such waiver is possible.

§ 296. *Taylor v. Best*, where the Lord Chief Justice said—

"If an Ambassador or public minister during his residence in England violates the character in which he is accredited to that Court, by engaging in commercial transactions that may raise a question between the government of Great Britain and that of the country by which he is sent, he does not thereby lose the general privilege which the Law of Nations has conferred upon persons filling that high character—the proviso in the statute of Anne limiting the privilege in cases of trading applying only to the servants of the embassy."

In order that the conclusion thus reached should not receive too wide a construction, Lord Campbell, in deciding the case of the *Magdalena Steam Navigation Company v. Martin*, 1859, after upholding the doctrine laid down in *Taylor v. Best*, said—

<sup>1</sup> Pitt Cobbett, *Cases and Opinions on International Law*, 3rd edit., 1909. i. 294, based on 28 L.J.Q.B. 310. The case was heard in 1859.

<sup>2</sup> 14 C.B., 487, 523, and see next §.

"It certainly has not hitherto been expressly decided that a public minister duly accredited to the Queen by a foreign state is privileged from all liability to be sued here in civil action."<sup>1</sup>

For the case of *Suarez v. Suarez* in 1917, see *Weekly Notes* for June 2nd, and *Times* of November 27th.

§ 297 The foregoing immunities of the diplomatic agent extend to his wife and children, to the members of the mission, whether belonging to the diplomatic service or not, such as naval, military, commercial, or other *attachés*, to his chaplain and medical attendant (provided they are exclusively in his service or in that of his government), to archivists, chancellors, and also, to a certain extent, to the servants in his employ. This last remark applies especially to servants whose nationality is that of the country to which he is accredited. In most countries it is usual for the diplomatic agent to furnish to the ministry for Foreign Affairs a full list of all the persons composing the mission for whom privilege is claimed. By the statute of 7 Anne c. 12 every servant must be registered with the Secretary of State for Foreign Affairs or the Sheriff of London and Middlesex, but he does not possess the privilege if he is engaged in trade. Article 19 of the German law of judicial procedure of 1879 exempts all servants not of German nationality from judicial pursuit.

The following courses are open to the head of the mission in the case of an offender of his own nationality:<sup>2</sup> (1) to arrest him, if he is within the precincts, or, if not, to request the authorities of the country to hand him over; (2) to ascertain the facts of the case, if necessary, with the help of the local authorities; (3) to examine such witnesses as belong to the *personnel*; (4) to surrender the culprit to the national authorities.

§ 298. Cases of this sort are happily rare. If the offence has been committed outside the legation, the easiest way would be for the head of the mission to ask

<sup>1</sup> Hannis Taylor, 339

<sup>2</sup> Holtzendorff, iii. 660.

the permission of his own government to leave the offence to be dealt with by the judicial authorities of the country, as was done in the instance of Carlos Waddington. This person, a son of the Chilian *Chargé d'affaires* in Belgium, on February 24, 1906, shot and killed, in a private house at Brussels, Ernesto Balmaceda, who was engaged to his sister. The murderer took refuge with his father at the legation. The legation being inviolable, no magistrate nor police officer attempted to enter it, and the public prosecutor confined his action to surrounding the house with police. Two days later, Waddington the father presented himself at the Palais de Justice, and informed the public prosecutor that he renounced immunity from the jurisdiction for his son, who desired to be tried by the Belgian courts. The public prosecutor having informed the minister for Foreign Affairs, it was decided that the murderer must await the consent of the Chilian Government before surrendering himself to custody. On March 2, the government of Chile having acquainted the Belgian government that they consented to the culprit being prosecuted in Belgium, Carlos Waddington gave himself up at the prison of Saint-Gilles, to the porter, with whom had been deposited a warrant of arrest. He was subsequently brought before the Cour d'Assises of Brabant.<sup>1</sup>

§ 299. *Civil Jurisdiction* ; case of Tchitchérine, before the Court of Appeal at Paris, July 12, 1868.

A certain Léonce Dupont, manager of a newspaper, *La Nation*, having become bankrupt, it was discovered in the course of the proceedings that he had lent his name to Tchitchérine, the councillor of the Russian embassy at Paris, who in the interests of his government had furnished funds to start the journal, and had undertaken to support it, on various conditions, of which proof was furnished. By its judgment of January 15,

<sup>1</sup> *Révue Générale de Droit International Public*, xiv. 159.

1867, the commercial court at Paris decided that it had jurisdiction in the matter.

The judgment said—

“ Seeing that in pleading to the jurisdiction, Tchitchérine appealed to his position and maintained *that it is an indisputable principle that diplomatic agents cannot be subject to the jurisdiction of the courts of the country to which they are accredited* ; seeing that if the immunities to which he appeals belong to the representatives of foreign Governments in order that they shall not be molested in the discharge of their functions, these immunities cannot be extended to them when they enter into commercial transactions in their private interest ; that Tchitchérine acted outside his functions as councillor of embassy, and that in this instance he had placed himself outside of the immunities, in consequence it declares that it has jurisdiction.”

Tchitchérine appealed from this decision. The public prosecutor became *partie civile* in the case, and also put in appearance as appellant.

The court rejected the appeal of the public prosecutor and admitted that of Tchitchérine.

Some of the grounds of this decree are interesting to record :

“ Seeing that it is an established fact, and not disputed, that Tchitchérine is attached as councillor to the embassy of H.M. the Emperor of Russia to H.M. the Emperor of the French, and that thus he had in France the character of a foreign diplomatic agent ; Seeing that it is an established principle of the Law of Nations that the diplomatic agents of a foreign government are not subject to the jurisdiction of the courts of the country to which they are sent ; that this principle is based on the nature of things which in the respective interest of the two nations does not allow these agents to be exposed in their person or property to legal proceedings, which would not leave to them complete liberty of action, and would embarrass the international relations of which they serve as intermediaries ; That in France this principle has been specially recognized by the decree of the 13th ventôse an II, from which it follows that claims which may be put forward against the envoys of foreign Govern-



ments must be stated and pursued through diplomatic channels; Seeing that, supposing an exception could be made to this principle in the case of diplomatic agents who devote their attention to commercial operations and by reason of such commercial operations, the contract by which Tchitchérine secured the right of directing the publication of the newspaper *La Nation* would be of a character quite other than that of a commercial speculation entered into in private interest: It was erroneously, therefore, that the court maintained cognizance in the claim made by the trustee of the bankruptcy of Dupont and by Dupont himself, and ruling upon the appeal of Tchitchérine says that the commercial court of the Seine was not competent to take cognizance of the claim put forward by him and Dupont."

§ 300. The Cour de Cassation had to give a decision on January 10, 1891. The civil court of the Seine, in July 1889, had condemned in default Count Errembault de Dudzele, councillor of the Belgian legation in France, to the payment of a sum of fr. 377.05. The diplomatic agent not having appealed within the legal period against the decision, the minister appealed against it in the interest of the law. The civil division quashed the decision by a decree of January 10. Some of the grounds of the decision deserve to be quoted—

"La Cour, vu le décret de la Convention nationale du 13 ventôse an II, défendant à toute autorité constituée d'attenter en aucune manière à la personne des envoyés des gouvernements étrangers. Attendu qu'une des conséquences du principe rappelé dans le décret susvisé est que les agents diplomatiques des puissances étrangères ne sont pas soumis en règle générale à la juridiction des tribunaux français; attendu que cette immunité doit s'étendre à toutes les personnes faisant officiellement partie de la légation. Attendu que l'incompétence des tribunaux français en cette matière étant fondée sur le besoin d'indépendance réciproque des différents États et des personnes chargées de les représenter, ne peut fléchir que devant l'acceptation certaine et régulière que feraient les dites personnes de la juridiction de ces mêmes tribunaux. . . .

"Les immunités ont été reconnues de même aux attachés d'ambassade par le tribunal de la Seine par jugement du 10 août, 1855.



“ Attendu, dit ce jugement, qu’Aurelio Pinto justifie qu’il est attaché à la légation impériale du Brésil en France ; que conformément aux règles du droit des gens, le caractère dont il est revêtu ne permet pas qu’il soit traduit devant la juridiction française pour une affaire purement personnelle, . . . se déclare incompétent. . . .

“ En Allemagne la loi nous dit : ‘ Les tribunaux nationaux n’ont pas juridiction sur les chefs et les membres des missions diplomatiques accréditées auprès de l’empire Allemand ’ (Code d’organisation judiciaire de l’empire Allemand, art. 18).

“ En Autriche nous trouvons la disposition suivante : ‘ Les ambassadeurs, les chargés d’affaires, et les personnes qui sont à leur service jouissent des franchises établies par le droit des gens et par les traités publics ’ (Code civil autrichien, art. 38).”<sup>1</sup>

§ 301. In 1763, a Count von Wartensleben, Netherlands envoy to the Upper Rhine and Westphalian Circle, and consequently also to Hesse-Cassel, was accused of having illegally dealt with a private religious or charitable foundation on behalf of the deceased Freiin (Baroness) von Görz, in his capacity as her testamentary executor. The Government of Cassel demanded an account from him, and when he refused it, caused him to be arrested in his apartment, until he delivered the papers demanded of him. A special mission had to be sent by the Landgrave Frederick to the Hague, to reconcile the offended States-General.<sup>2</sup>

§ 302. *Jurisdiction of the Envoy over Persons belonging to his Suite.*

Schmelzing, whose book was published as early as 1819, holds that “ the envoy is not only exempt as regards his own person and his family from the local civil jurisdiction, but that he exercises the latter, in accordance with international usage, over the whole of his suite. Nevertheless, the assertion that the exemption of the suite from the local civil jurisdiction promotes the legitimate objects of the mission cannot

<sup>1</sup> Roederer, 35. See also Pradier-Fodéré, ii. 131.

<sup>2</sup> Schmelzing, ii. 239, based on de Martens’ *Erzählungen merkwürdiger Fälle*, i. no. 8.

be upheld on any general legal grounds. International tradition has, however, conceded to the envoy civil jurisdiction over his suite, in order to avoid the manifold unpleasantness and collisions which the contrary arrangement would beget between him and the State to which he is accredited, or its judicial authorities. The questions whether an envoy can exercise civil jurisdiction (both voluntary and contentious) only over his suite proper, or also over persons who do not belong to the mission, but have merely placed themselves under its protection, or happen to accompany it, as well as over even those of his countrymen who happen to be in the territory of the State, or how far the private legal affairs of such persons can lawfully be dealt with solely by the courts of the home country, must be decided by the special circumstances, conventions or usages of the sending and receiving States.<sup>1</sup> Thus much is observable from international practice, that most attributions in the way of the exercise of voluntary and contentious jurisdiction over their suite are conceded to ambassadors and to envoys of the second class; that envoys of the third class are seldom empowered to exercise this prerogative in the territories of Great Powers, and often can exercise them in the territory of minor states only with great limitations.

1. The above statement only affects the *personnel* of the mission which is attached to the envoy and is paid by his own government. The suite of the envoy in the narrower sense, the members of which are in his employ or look to him for their sustenance, is to be distinguished from the foregoing.

2. No difference arises here between foreigners or natives of the State who form part of the suite (v. Bynkershoek, *De judice competente legat.*, cap. xv.). At Munich, in 1790, in a particular case a distinction was made between the suite proper and the rest of the follow-

<sup>1</sup> This is apparently an allusion to States which have conceded consular jurisdiction by treaty or otherwise.

ing, consisting of domestic officers and servants. In England every foreign minister has to send in, on his arrival, a list of the persons belonging to his suite, and to notify any subsequent changes (7 Anne, cap. 12). De Martens V. R., p. 257, § 216, note (a) asks whether it would not be advisable to introduce this practice everywhere.

3. In virtue of the voluntary civil jurisdiction the Envoy can certify contracts, draw up wills, accept custody of them, seal up the property of a deceased person, etc. The question whether the Envoy can also, with legal effect, receive the last testamentary dispositions of foreigners not belonging to the mission must be answered in the affirmative, when the Envoy in question is empowered to exercise jurisdiction to its full extent (*vide* De Martens, *Du Droit des Gens*, L. VII., c. v. § 219, note (e)). Whether such transactions are valid in the home country in regard to the Envoy's countrymen who do not belong to the suite of the mission must be decided by its laws. The country from which they are despatched does not recognize the validity of such transactions if they require the competency of a court."<sup>1</sup>

It is not desirable that members of the British diplomatic service should perform notarial or other acts of the kind enumerated, in places where there is also a British consulate. The rules with regard to the celebration of marriages in a diplomatic house are to be found in the British Foreign Office List, and should be strictly adhered to. It is always preferable, even in a case where both parties are British subjects, and imperative where one of them is not British, to advise the parties to be married in accordance with the *lex loci*.

§ 303. As to marriages, the following observations of Hannis Taylor will be found useful—

<sup>1</sup> Schmeling, ii. 234.

"It seems to be clear that such an agent may legalize contracts of marriage between members of his suite; and some writers claim that he may also legalize marriages between subjects of his state, other than members of his suite, when specially authorized to do so by his sovereign. There is, however, no general custom compelling other states to recognize such marriages. Even in countries where the marriage of two foreigners may be solemnized, it seems that the marriage of a subject of the state with a foreigner in the house of his ambassador, according to the law of the foreign state, will not be upheld. As evidence of the tendency in that direction, reference may be made to the case of *Morgan v. French*, in which a marriage between an Englishman and a French subject, celebrated at the English embassy at Paris, was declared void by the Tribunal Civil de la Seine, and to the case of a marriage between an Austrian and an English woman, celebrated in English form at the English embassy at Vienna, annulled by the Supreme Court of Austria in 1880. There is, however, no well-defined rule upon the subject, which is involved in great confusion and uncertainty."

But it seems clear that the diplomatic agent has no jurisdiction over persons belonging to the official suite, nor over his domestics, in contentious matters.

§ 304. Attempts have been made in earlier times to exercise criminal jurisdiction over the members of the suite. A famous case recorded in the books is that of the Duc de Sully. Being sent on a special embassy to James I immediately after his accession, he arrived in England in June, 1603. On the same night certain of his suite went to a house of ill fame, where they had a quarrel with some Englishmen, one of whom was killed. Having heard of the incident, as he was playing at cards, Sully ranged them round the room, and having closely examined their countenances one by one, he hit upon a man named Combault, whom he compelled to admit the fact. He then sent a message straightway to the Mayor of London, informing him that he had condemned the offender to be decapitated, and asking for the services of an executioner on the following morning. The Mayor replied that he knew of the affair, and had

intended to complain to Sully the next day ; he had not expected Sully to proceed in the matter with such celerity nor with such severity, which he thought might be moderated. Sully replied that no representations of his own people having had the effect of changing his resolution, he saw no way of satisfying them and the Mayor, but to ask the latter to take charge of the prisoner and inflict on him whatever penalty the law of England might prescribe.<sup>1</sup> Combault was therefore handed over, but was pardoned at the solicitation of Beaumont, the ambassador-in-ordinary. Phillimore says that the French contended that though King James might remit the execution of the man in England, yet, being a Frenchman and judged by his own tribunal, the King could not grant him a pardon.<sup>2</sup>

§ 305. Lucien Bonaparte had been sent as French envoy to Charles IV of Spain. A Spanish husband, informed of a love affair between his wife and Lucien, shut her up in a convent and sent him a challenge. Lucien, who was not wanting in personal courage, accepted the challenge, but his friends gave him to understand that it did not become the representative of a great nation at a foreign Court to expose his life for such a trifle. An historical painter named Le Thiers offered to take his place, and on the following morning awaited the aggrieved husband on the ground. The Spaniard made his appearance, and asked for his antagonist. Le Thiers replied haughtily · “ It is I.” “ You ? I don’t know you ; a nobleman like myself cannot fight a person of your stamp. I will know where to find the envoy.” With these words the nobleman entered his carriage, and drove back to Madrid to make what had happened publicly known. The Court took a more philosophic view of the case, and exiled the nobleman to his country seat.<sup>3</sup>

<sup>1</sup> Michaud and Poujoulat, ii. 444.

<sup>2</sup> ii. 178 n.

<sup>3</sup> *Ibid.*, 240.



In the last decade of Frederick the Great, Prussia recalled her envoy from Turin, on receiving a complaint from that Court that he had insulted a Sardinian officer in a private quarrel.

§ 306. "Where special conventions have not otherwise provided, a distinction is made in practice between an offence (against his own country or a fellow subject) committed within the walls of the legation and one committed outside.

"In the first case, the envoy claims the right, though now and then it is disputed, of sending the accused in fetters to the courts of his own country for punishment. But it is never permitted to the envoy to inflict a corporal penalty on the offender, even in his own legation."<sup>1</sup>

"Members of the suite who commit an offence outside the legation precincts against a subject of the State or against public order are tried and punished by the State. In order to avoid all disputes the envoy dismisses such offenders from his service, or hands them over on the requisition of the local authorities. But this does not apply to members of the diplomatic *personnel*, whom he has no power to dismiss.<sup>2</sup> He must either arrange for their dismissal by his own Government, with a view to the surrender of the culprits to the authorities, or for an order to send them home for punishment."<sup>3</sup>

§ 307. The kidnapping and confinement, in 1896, in the Chinese legation in London, of Sun Yat Sen, a Chinese revolutionary leader (or reformer, whichever the reader prefers), with a view to sending him back to China to be put to death, was an assumption of authority by the Chinese minister which the British Government could not tolerate. The prisoner managed to get a letter conveyed to an English friend, who made representations to the Foreign Office, and in the result Sun

<sup>1</sup> Schmelzing, ii. 241.

<sup>2</sup> Schmalz, 118.

<sup>3</sup> Schmelzing, 243.



Yat Sen was restored to liberty after a few days' detention.<sup>1</sup>

§ 308. *Mode of obtaining the Evidence of a Diplomatic Agent.* A diplomatic agent cannot be required to attend in court to give evidence of facts within his knowledge, either in a civil or criminal suit, nor can a member of his family or suite be so compelled. If he were to appear, it is submitted that he would thereby admit the application to him of the laws of the state with regard to the behaviour of witnesses. The usual method is for the evidence to be taken down in writing by a secretary of the mission, or by an official whom the diplomatic agent consents to receive for the purpose, and the evidence is communicated to the court in that form. A difficulty arises in countries where evidence, particularly in a criminal case, has to be taken orally and in the presence of the accused. The diplomatic agent might conceivably consent to waive his privilege, but if he does so, he should be careful to secure himself beforehand by obtaining a written undertaking from the minister of Justice or the minister for Foreign Affairs that he shall be held free of all the possible consequences of the testimony which he is about to give. In countries where witnesses are cross-examined directly by counsel, few diplomatic agents will be found willing to submit themselves to such an ordeal.

§ 309. Calvo<sup>2</sup> quotes a case which occurred in the United States, where the Netherlands Minister was requested by the Secretary of State to appear in court to give evidence regarding a homicide committed in his presence. By the unanimous advice of his colleagues he refused. Representations were made to the Netherlands Government by that of the United States, which, while admitting that in virtue of international usage

<sup>1</sup> Sun Yat Sen, *Kidnapped in London*. J. Cantlie, *Sun Yat Sen and the Awakening of China*.

<sup>2</sup> Fourth edition, § 1520 n.

and of the laws of the United States the Minister had the right of refusing to give evidence, appealed to the general sense of justice of the Netherlands Government. The Netherlands minister for Foreign Affairs declined to give the desired instructions, but authorized the Minister to give his evidence in writing. Accordingly, M. Dubois wrote to the Secretary of State offering to give evidence before him, adding, however, that he could not submit to cross-examination. His offer was declined, because the district attorney-general reported that such a written statement would not be receivable as evidence.<sup>1</sup>

§ 310. The printed instructions of the American Department of State are that "a diplomatic representative should not consent to appear before a tribunal except by the consent of his government. Even if called upon to give testimony under conditions which do not concern the business of his mission, and which are of a nature to counsel him to respond to the interests of justice, he should not do so without the consent of the President, which in such case would probably be granted."<sup>2</sup>

§ 311. Hall<sup>3</sup> says that in such a case it is proper for the minister or the member of his suite whose testimony is needed to submit himself for examination in the usual manner, and Calvo was of opinion that the principles of the Law of Nations do not allow him to refuse to appear in court and give evidence in the presence of the accused, where the laws of the country absolutely require this

<sup>1</sup> In the first edition it was stated on the authority of Calvo, that the United States asked for his recall. This is not a fact. M. Dubois asked to be placed *en disponibilité* for reasons entirely unconnected with the matter referred to, and on his leaving Washington the President in recredential address to the King of the Netherlands said that during M. Dubois' residence in the United States his language and conduct had been "such as to meet the approbation of this Government."

<sup>2</sup> J. W. Foster, *Practice of Diplomacy*, etc., 162.

<sup>3</sup> Sixth edition, 182.

to be done. They thus appear to be in contradiction with the Secretary of State himself.<sup>1</sup>

Oppenheim (§ 392) states that "no envoy can be obliged, or even required, to appear as a witness in a civil or criminal or administrative Court, nor is an envoy obliged to give evidence before a Commissioner sent to his house."

The envoy may, if he is so disposed, authorize the appearance of a member of his official suite or of his household.<sup>2</sup>

<sup>1</sup> Cf. Ullmann, 187, 188, and notes.

<sup>2</sup> Ullmann, 188 n. 1.

## CHAPTER XIX

### EXEMPTION FROM TAXATION

§ 312. Summary—§ 313. Exemption from Customs duties, Callières on—§ 314. Bismarck on—§ 315. On the agent's arrival at his post, and other taxes—§ 316. Russian practice—§ 317. In Great Britain—§ 318. Spain—§ 319. France, and other countries—§ 320. Exemption from billeting of soldiers—§ 321. Legation building not exempt from property tax—§ 322. Parochial rates in Great Britain—§ 323. United States, conditions of reciprocity—§ 324. *Octroi*, reciprocity not always possible—§ 325. Rights of the members of the mission.

§ 312. "The person of a diplomatic agent, his personal effects and the property belonging to him as representative of his sovereign, are not subject to taxation. Otherwise he enjoys no exemption from taxes or duties as of right. By courtesy, however, most, if not all, nations permit the entry of goods intended for his private use."<sup>1</sup>

It is held that this exemption extends to income tax. If so, a diplomatic agent would have to apply for a return of income tax on national debt bonds, stocks, shares and debentures on which the tax is deducted at the source. As it is better that he should not expose himself to the necessity of having to make application for repayment, it will be better to avoid any investments of the kind in the country where he is stationed as representative of his sovereign.

#### § 313. *Exemption from Customs Duties.*

"Il y a plusieurs ministres qui abusent du droit de franchise qu'ils ont en divers pays touchant l'exemption des impôts sur les denrées & sur les marchandises nécessaires à l'usage de leur maison, & qui sous ce prétexte en font passer quantité d'autres pour des Marchands dont ils tirent des tributs en

<sup>1</sup> Hall, 6th edit., 183.

leur prêtant leur nom pour frauder les droits du Souverain. Ces sortes de profits sont indignes d'un Ministre public & le rendent odieux à l'Etat qui en souffre du préjudice, ainsi que le Prince qui les autorise. Un sage Ministre doit se contenter de jouir des franchises qu'il trouvent établies dans le pays où il est envoyé, sans jamais en abuser pour son profit particulier par des extensions injustes, ou en participant à des fraudes qui se font sous son Nom.

" Le Conseil d'Espagne a été obligé depuis quelques années de régler ces droits de franchise pour tous les Ministres Etrangers qui résident à Madrid, moyennant une somme par an qu'on y donne à chacun d'eux à proportion de leur caractère, pour empêcher ces abus ; & la République de Genes en use de même à l'égard des Ministres des Couronnes qui résident chez elle." <sup>1</sup>

§ 314. Bismarck said one day, *à propos* of Morny—

" Wie der zum Gesandten in Petersburg ernannt worden war, kam er mit einer ganzen Reihe schöner, eleganten Wagen an, und alle Koffer, Kisten und Kasten von Spitzen und Seidenzeug und Damenputz, wofür er als Botschafter keinen Zoll zu zahlen hatte. Jeder Diener hatte seinen eignen Wagen, jeder Attaché oder Secretär mindestens zwei, und er selber hatte wohl fünf oder sechs, und wie er ein Paar Tage da war, verauctionirte er das Alles, Wagen und Spitzen und Modesachen. Er soll achtmal hundert tausend Rubel dabei verdient haben—Er war gewissenlos aber liebenswürdig—er konnte wirklich sehr liebenswürdig sein." <sup>2</sup>

Let us hope that this story is at least an exaggeration.

§ 315. On his arrival at his post his baggage will usually not be examined by the Customs officials.

" En vertu d'une coutume qui varie, et qui est, en certain pays, consacrée par la loi, et à moins de suspicion motivée de fraude, on ne visite pas leurs effets à la douane.

" En revanche et sauf dispenses conventionnelles spéciales, ils payent comme tout le monde les impôts fonciers et autres charges réelles pour les immeubles qu'ils possèdent dans le

<sup>1</sup> Callières, 163.

<sup>2</sup> Busch, ii. 279. Busch, *Bismarck, Some Secret Pages of His History* i. 503.

pays ; les contributions municipales imposées à l'habitant comme tel ; les impôts indirects frappant les objets de consommation qu'ils achètent dans le pays ; les droits qui ont le caractère d'une rémunération due à l'État ou à la commune, ou à des particuliers, pour des objets à l'usage desquels l'agent participe : péages de chaussées et de ponts, taxes télégraphiques, taxes de chemin de fer, port de lettres, etc. ; enfin, les droits qui sont exigés à l'occasion de certains actes ou transmissions : droit de mutation, d'enregistrement." <sup>1</sup>

#### CUSTOMS DUTIES.

§ 316. *Russia.* All members of the *corps diplomatique* were allowed to introduce their movables duty-free, and to receive those which might be addressed to them during the first year of their residence in Russia upon the same terms.<sup>2</sup>

#### § 317. *Great Britain.*

1. The privilege accorded to the heads of foreign missions, accredited to Great Britain from foreign Powers, to receive free of duty articles imported for their private use is not held to be in the nature of a right, but to spring from the courtesy of the Government to which the representative is accredited. The general course of proceeding may be stated to be as follows: Heads of Missions whose appointment has been notified by the Foreign Office to the Lords Commissioners of His Majesty's Treasury are treated with the usual respect in the examination of their baggage and effects, and such articles as are for their private use, and which personages of their rank may be supposed to require for domestic purposes, are passed duty free ; but with respect to wine, spirits, and cigars or tobacco, under the following limitations : in the case of an Ambassador the quantity of wine is limited to one tun or 252 gallons, a Minister or *Chargé d'affaires* being limited to 10 gallons, and the quantity of cigars or manufactured tobacco must not exceed 5 lb. in weight. Secretaries of Embassy or Legation and attachés are not allowed articles duty free.

2. *As regards articles brought for or sent to the Head of a foreign Mission at any time subsequent to his arrival in this country :*

(a) All bags or packages brought by a messenger and

<sup>1</sup> Rivier, 503.

<sup>2</sup> Phillimore, ii. 208.



claimed by him as containing despatches are passed without delay free of search, unless there should be good grounds for supposing that any abuse of the privilege was taking place, in which case an officer of Customs would be directed to accompany the messenger to the residence of the Ambassador, Minister, or *Chargé d'affaires*, to impart such opinion to him, and, with his consent, to be present at the opening of the packet.

(b) Packages for foreign Ambassadors, Ministers, or *Chargés d'affaires*, arriving by messenger and not claimed as containing despatches, and packages arriving on freight, are, as a rule, sent to the Custom House, London. The officials there inform the Head of the Mission of its arrival, and on a written application, signed by him, to the Secretary of State for Foreign Affairs, which is transmitted to the Customs by the Secretary of State with a covering letter, the goods are delivered free of duty, under standing Treasury authority, to the Head of the Mission, or to his Agent, a Customs officer being sent in charge if the goods carry a high rate of duty. But packages are sent direct to the Head of a Mission from the port of arrival, if he specially desires it, on receipt of the usual letter from the Secretary of State, a letter of advice being forwarded by the Customs at the same time. Packages arriving by post are, as soon as the letter from the Secretary of State is received, handed to the postal officials for delivery.

Such packages are not opened at the custom-house. If the quantity of dutiable articles contained cannot be estimated, by external examination, with sufficient accuracy for the purposes of the record which is kept by the Customs, the information is obtained by that department from the Head of the Mission to whom the goods are delivered.

Goods admitted free of duty under the foregoing conditions are exempted from Customs entry, and as such entry is the basis of the records of imports for statistical purposes, it follows that the goods are not included in the published Statistical Returns.

3. *In the case of foreign Representatives passing through this country—*

On the receipt of an order from the Lords of the Treasury only a slight examination of the Minister's private effects is made, and duty is not charged upon a moderate quantity of cigars, etc., for immediate use.

4. *In the case of foreign Representatives arriving after a temporary absence—*

Under the authority of an Order of the Lords of the Treasury, dated May 18, 1887, the Representatives of foreign Powers in London have been furnished by the Commissioners of His Majesty's Customs with passes, on the production of which all baggage accompanied by and personal to a foreign Representative and his family and suite will be exempted from examination, and such passes are issued by the Board of Customs upon the appointment of a new Representative on application through the Foreign Office, the pass issued to his predecessor being returned to the Customs, and duly cancelled. The right of search is, however, maintained by His Majesty's Government.

*Foreign Office,  
January, 1904.*

§ 318. *Spain.* The diplomatic envoy and his suite are exempt from personal taxes in the country where they reside; but they have to satisfy those of the Customs and of municipal *octroi*, from which they are not dispensed except in virtue of an ancient custom which has established a precedent for permits (*laisser-passer*) and for the concession of exemptions to the Heads of Missions.

In nearly all countries there is a limit to these exemptions, for the amount of duties remitted is in proportion to the category to which each Head of Mission belongs, but by a well-understood liberality, which does not injure the Customs revenue beyond an insignificant degree, the custom has become established that when the credit allowed to a diplomatic agent becomes exhausted it is immediately renewed, the result being that there is always enough for his requirements.

At p. 331 of the work quoted will be found the forms in use for requesting a Customs pass.

Exemption from municipal *octroi* is granted by way of reciprocity, and the same rules, generally speaking, are observed as in the case of Customs duties.<sup>1</sup>

<sup>1</sup> De Castro y Casaleiz, ii. 39.

§ 319. *France.* The Head of a Mission applies for and receives exemption from Customs and *octroi* duties on goods consigned to him, but enjoys no such privilege in respect of *octroi* duties when entering Paris; e.g. the petrol in his motor-car may be charged for.

*Austria.* At Vienna there is no exemption from *octroi* duties.

*Portugal.* At Lisbon the heads of missions are exempted from the payment of all Customs and *octroi* duties.

*Japan.* At Tokio, for which the nearest port of entry is Yokohama, the Heads of Missions are allowed to import all articles for their own use duty free.

*Germany.* By a resolution of the Bundesrath of April 29, 1872, the amounts of duties to which the importations of diplomatists would be liable is charged to the State.<sup>1</sup>

*Switzerland.* By a decision of the Federal Council of February 20, 1891, Heads of Missions accredited to the confederation, as well as *Chargés d'affaires ad interim*, are to enjoy freedom of entry without payment of Customs duties for all objects coming from abroad for their personal use and that of their families, on condition of reciprocity on the part of the States which they represent.

As regards the rest of the *personnel*, only the general regulations and commercial treaties have application. Further freedom of entry in particular cases is only allowed on condition of reciprocity.

Such articles must pay the duties on importation, which will be refunded by the supreme direction of Customs.

The Heads of Missions will present every quarter a list of the duties paid for which repayment is claimed, on a prescribed form, with a signed declaration and accompanied by receipts for the duties paid in.<sup>2</sup>

<sup>1</sup> Holtzendorf, iii. 659.

<sup>2</sup> G. F. de Martens, *Nouv. Rec. Gén.* 2<sup>e</sup> série, xviii. 241.

In many countries the duty-free importation of articles for the use of other members of the mission is tacitly allowed, provided the packages are addressed to the Head of the Mission. It is said that a bachelor ambassador once declined to sanction the use of his name for the importation of ball-dresses for the wife of a secretary, on the reasonable ground that no one could suppose that he had any use for such articles.

§ 320. The diplomatic agent is further exempt from having soldiers billeted on him.

§ 321. The building of the legation, if it is the property of the agent's Government, is not free from property tax (*impôt foncier*) except in virtue of a special agreement, such as existed between Germany and France, and between Germany and Russia.

§ 322. PAROCHIAL RATES. In Great Britain, the member of a diplomatic mission, whose name has been furnished to the Foreign Office in accordance with the statute of 7 Anne, c. 12, cannot be charged parochial rates. Such rate is recoverable only from the landlord of the house occupied by the member in question (35 Geo. III. c. 73, sect. 19). If the latter be a British subject, and, at the time his name is submitted, a condition is imposed that he shall remain subject to British civil jurisdiction, then he cannot claim this privilege.<sup>1</sup> But it is very unusual, perhaps quite unheard-of, to impose such a condition. In 1892, a circular was addressed by the Foreign Office to the Heads of Missions accredited to Great Britain, offering to extend to the Heads and *bonâ fide* members of the Mission (excluding honorary *attachés* and consular officers holding honorary diplomatic rank), on the condition of reciprocity, an arrangement by which the British Government undertook the payment of parochial

<sup>1</sup> *Macartney v. Garbutt and others*, L.R.Q.B.D., xxiv. 368, decided in 1890.

rates of the following classes: Poor, Police, Baths and Wash-houses, Public Libraries and Museums, Burial Board, miscellaneous expenses such as salaries, printing, etc., and School Board, on condition that the Head of the Mission would undertake, on his own behalf and that of the members of his staff, to repay to the Foreign Office, on application, the parish rates in respect of main drainage, street improvements, fire brigade, etc.; street lighting, for cleansing and maintaining the public streets, and general expenses under the Metropolitan Local Management Act, and the Vestry sewers rate. For it is held that exemption from local rates cannot be claimed as of right, and what is allowed in this respect is by way of comity.

§ 323. In the United States the rule, as stated by Mr. Bayard, Secretary of State, in a despatch to Mr. Woolsey, April 15, 1886, is that—

“ When a foreign legation occupies rented property in this country, the owner of the premises is not exempted from all lawful taxes; the rule observed by this Government with respect to taxation of property owned by a foreign Government and occupied as its legation, is to accord reciprocity in regard to general taxation, but not to specially exempt it from local assessments, such as water rent, and the like, unless it were definitely understood that these taxes would also be exempted by the foreign government upon a piece of property belonging to the United States, and used for a like purpose by our own minister.”<sup>1</sup>

§ 324. The condition that reciprocity shall be accorded seems at first sight a reasonable one, but cannot always be resorted to in practice. Thus, in regard to *octroi*, which in some countries seems to be the means employed for raising local taxes, no exact reciprocity would be possible with Great Britain, where such revenue is obtained by means of municipal rates, and the levying of *octroi* is unknown.

<sup>1</sup> Hannis Taylor, 345.

§ 325. RIGHTS OF THE STAFF.—The whole family (by which is to be understood the wife and children of the head of the mission) and the whole *personnel* of the mission share the privileges of inviolability, freedom from the local jurisdiction, and from direct taxes and imposts, but, on the other hand, the *personnel* enjoys no exemption from indirect taxation ; only when a secretary acts temporarily as *Chargé d'affaires* can he claim the latter, as it is now confined to Heads of Missions.



## CHAPTER XX

### IMMUNITIES OF THE RESIDENCE OF A DIPLOMATIC AGENT

§ 326. Cannot be entered by local authority—§ 327. Case of Mickilchenkoff—§ 328. Admiral Apodaca's servant—§ 329. Gallatin's coachman—§ 330. Right of Asylum, Ullmann on—§ 331. Hall's opinion—§ 332. In South-American republics—§ 333. Pradier-Fodéré's view—§ 334. Convention between certain South-American States—§ 335. Practice of other Powers—Balmaceda case—§ 336. French ambassador at Venice in 1540—§ 337. French ambassador at Copenhagen in 1702—§ 338. Case of Ripperda—§ 339. Springer's case—§ 340. Franchise du Quartier—§ 341. French case at Rome in 1660, Duc de Créqui—§ 342. French case at Madrid in 1680—§ 343. Renunciation of the right by various Powers—§ 344. French case at Rome in 1687—§ 345. At Genoa in 1759—§ 346. Domicile of diplomatic agent.

§ 326. These immunities attach, no matter whether the house is the property of the agent's Government, or his own, or is merely rented by him. If he occupies a flat, presumably the common staircase is not privileged.<sup>1</sup>

No officer of the state, and in particular no police-officer, tax-collector or officer of a court of law, can make his way into the house, nor, without the consent of the diplomatic agent, discharge any official function therein. The inviolability of the house also extends to the carriage of the diplomatic agent.

§ 327. In 1867, a Russian subject, named Mickilchenkoff, or Nikitschenkow, having obtained admission into the Russian embassy in Paris, assaulted and wounded an *attaché*, and the police, being applied to, entered the house and arrested him. The Russian Ambassador,

<sup>1</sup> By the Act of 13 and 14 Vict., c. 3, the Prussian minister was authorized to purchase a residence for his use (Hertslet, *Commercial Treaties*, viii. 866). An Act was necessary because, at that time, an alien could not acquire real property in England.

who was absent at the time, having returned, demanded that the offender should be given up to him to be sent to Russia for trial. The French Government refused, urging that the principle did not cover the case of a stranger entering the embassy and there committing a crime, but, even if it did, the privilege had been waived by calling in the police. The Russian Government eventually admitted the jurisdiction of the French court, and the prisoner was tried by the local law.

There are evidently cases in which the immunity of the agent's dwelling may cease to have effect : for instance, when it becomes necessary to arrest him and to search his papers.

The immunity of the agent's dwelling extends also to those of his official staff.<sup>1</sup>

§ 328. *Case of Apodaca's Servant.* In December 1808, Admiral Apodaca, diplomatic representative of the Supreme Junta of Seville, had occasion to complain to Canning that one of his Spanish servants had been arrested by a constable, of the Mary-le-bone parish force, who got into the house by the kitchen door, while another waited outside in the street. He had remonstrated with them for this violation of diplomatic privilege, but they replied (naturally enough) that they could only be guided by the warrant. Apodaca sent a secretary to the Foreign Office, but he was not able to find either Canning or Hammond, the under-secretary, which rendered it necessary for him to address a Note to Canning. In the meantime, the officers of justice consented to leave the servant in the house, a neighbour having gone bail for him. Apodaca declared that he had no objection to the servant being tried and convicted if he were guilty (it was on a charge of bastardy that the arrest had been attempted), but he protested against the violation of his diplomatic privilege, in arresting one of his servants in his house without previous notice.

<sup>1</sup> Nys, ii. 387.

Under these circumstances, in order to avoid all dispute and to preserve his rights, he begged Canning in a friendly manner to advise him how to proceed.<sup>1</sup>

The case was referred to the Chief Magistrate at Bow Street, who reported that the arrest did not take place upon any civil process, but on a charge of bastardy, and he doubted very much whether the arrest of an ambassador's servant under such circumstances constituted a breach of an ambassador's privilege. He admitted that very little was to be found in the books, except where the arrest had been upon civil process, and he quoted Coke's Institutes, fol. 153, where it is said : " If an Ambassador committeth any crime which is *contra jus gentium*, as Treason, Felony, Adultery, or any other crime which is against the Law of Nations, he loseth the Dignity and Privilege of an Ambassador and may be punished here as any other private Alien, and need not be remanded back to his Sovereign, but of Curtesy." The constable who executed the warrant had been questioned, and was found to be ignorant whether the magistrate who granted the warrant was acquainted with the circumstances of the man complained against being an ambassador's servant.<sup>2</sup>

No reply from the Foreign Office to Apodaca's Note of December 22 has been found at the Public Record Office, but in his report to the Spanish Government he stated that the servant had been released, and that he had declared himself satisfied.<sup>3</sup> It seems probable that the magistrate's explanation was communicated to him verbally, and that some sort of apology was made for the entry into his house without his permission.

§ 329. *Gallatin's Coachman*. In this case, as in so many others, two questions were involved : (1) the immunity of a public minister's hotel ; (2) the immunity of his servants from arrest and trial by the local courts. The whole of the documents do not appear to have been

<sup>1</sup> P.R.O., F.O., 72/67.

<sup>2</sup> *Ibid.*, 72/70.

<sup>3</sup> Villa-Urrutia, i. 304.

published before, and for this reason, instead of attempting merely to summarize their contents, we prefer to reproduce the more important ones in their entirety.

A. Substance of [verbal] communication from Mr. Laurence, private secretary to Mr. Gallatin, etc.—

F.O., May 12, 1827.

Robert Vickery, Mr. Gallatin's coachman, was arrested in his Stable (on the 11th May) on a charge of assault, by virtue of a Warrant from one of the Sitting Magistrates in Great Marlborough Street.

On application to them by Mr. Laurence, they gave it as their opinion that the Act of Parliament (vii Anne ch. 12) applied only to civil writs and processes, and seemed to think the arrest might be made in the Stable, because it was, as is almost universal in London, detached from the Dwelling House.

Mr. Gallatin has dismissed the Coachman and is very desirous not to be compelled to make an Official Application on a subject of this kind.

Mr. Laurence is requested to enquire (1) Whether the Act above stated is, and has been, generally construed as applying only to civil processes—

(2) Whether, supposing this to be the case, it is not acknowledged as a general practice under the Law of Nations, that in cases at least of simple Misdemeanours, application is made in the first instance to the Minister, in order that servants may be dismissed or arrested.

(3) Whether an arrest on any part of the premises occupied by the Minister is not acknowledged in general to be an infraction of the usual Diplomatic Privileges—extreme cases always excepted.<sup>1</sup>

B.

F.O., May 18th, 1827.

Private.

Draft. Mr. Laurence.

DEAR SIR,

Following the course adopted by Mr. Gallatin, in the notification respecting the arrest of his Servant, which I had the honour to receive from you in his name, I hasten to communicate to you in this unofficial form, for Mr. Gallatin's information, the result of the reference to the Law Officers of the Crown, which was made by Lord Dudley's Directions,

<sup>1</sup> P.R.O., F.O. 5/232.

upon the Questions of Law arising out of the circumstances of that arrest.

The Statute of the 7th Anne, cap. 16 (sic) has been considered in all but the penal parts of it, as nothing more than a declaration of the Law of Nations ; and it is held, that neither that Law, nor any construction that can properly be put upon the Statute, extends to protect the mere Servants of Ambassadors from Arrest upon criminal charges ; altho' the Ambassador himself, and probably those who may be named in his Mission are by the best opinions, tho' not by the uniform practice of this Country, exempt from every sort of Arrest or Prosecution criminal and civil.

Although it hence appears that the Officers of police, in executing the Magistrate's Warrant for the arrest of Mr. Gallatin's Coachman, have not exceeded their legal powers, it is nevertheless matter of much regret to Lord Dudley, that the mode in which they have discharged this duty should have been productive of any personal inconvenience to Mr. Gallatin, or have indicated any want of due consideration for his publick character and station.

In order to mark the sense which Lord Dudley entertains of the impropriety of the proceedings of the Officers in this respect, and to prevent the recurrence of the like proceedings in future, His Lordship will take care that the Magistrates are apprized, through the proper channel, of the disapprobation of His Majesty's Govt. of the mode in which the Warrant was executed in the present instance, and are further informed of the expectation of H. M<sup>ys</sup> Govt. that, whenever a Servant of a Foreign Minister is charged with a misdemeanour, the Magistrate shall take proper measures for apprizing the Minister either by personal communication with him, or through the Foreign Office, of the fact of a Warrant being issued, before any attempt is made to execute it—in order that the Minister's convenience and pleasure may be consulted as to the time and manner in which such Warrant shall be put in execution.<sup>1</sup>

C. The Undersigned, Minister of the United States, has the honour to pray Lord Viscount Dudley, His Majesty's Principal Secretary of State for Foreign Affairs, that the enclosed list, which contains the names of his domestics, may be considered as supplementary to that of the persons belonging to the Mission of the United States, which he had transmitted on the 16th day of April last.

<sup>1</sup> P.R.O.. F.O. 5/232.



Having always thought that the most proper course was to dismiss any of his servants, who might be charged with any offence, or who should attempt to avail himself of his situation to avoid the payment of his just debts, the Undersigned had not deemed it necessary to make a return of their names. But an incident, which has lately occurred and which is within Lord Dudley's knowledge, has shown that the omission might be attended with some inconvenience.

The Undersigned has also the honour to enclose the copy of a note addressed to him on the 22nd instant by one of the Magistrates of Westminster, on receipt of which, he dismissed from his service the servant therein mentioned, as being charged with a breach of the peace.

It is not believed that, with the proper feeling which now generally prevails on subjects of that kind, they can ever produce any serious difficulty. And it is understood, as a matter of course, that no greater immunities are claimed for His Majesty's Ministers abroad, than are allowed by His Majesty's Government to Ministers from foreign Countries.

Yet having reason to believe that the Act of Congress, declaratory of the law of Nations on that subject, though nearly a transcript of the British Statute, has been construed to apply to criminal as well as to civil process, and in order to guard against any inference, which might be drawn from his silence, the Undersigned deems it his duty to say, that he is not prepared to admit, that the construction put by Great Britain on the law of Nations in that respect (and of which he presumes that the letter of Mr. Backhouse to Mr. Laurence, of the 18th instant, though unofficial, gives a fair exposition), accords either with the best opinions, or with the general practice of other nations.

The Undersigned prays Lord Dudley to accept the renewed assurances of his high consideration.

ALBERT GALLATIN.

Upper Seymour Street,  
May 25th, 1827.

The Right Honourable Lord Viscount Dudley, etc.<sup>1</sup>

D. (draft).

F.O., June 2/27.

MR. GALLATIN,

The Undersigned, etc., has the honour to acknowledge the receipt of the note of Mr. Gallatin, etc., of the 25th ult<sup>o</sup>, enclosing (1) a List containing the names of Mr. Gallatin's Domesticks, which he begs may be considered as supple-

<sup>1</sup> P.R.O., F.O. 5/232.



mentary to that of the Persons belonging to the Mission of the United States, which Mr. Gallatin transmitted to the Foreign Office on the 16th of April last ; and (2) a Copy of a Note addressed to Mr. Gallatin by one of the Magistrates of Westminster, on the receipt of which Mr. Gallatin dismissed from his Service the servant therein mentioned, as being charged with a breach of the peace.

The Undersigned has the honour to inform Mr. Gallatin that he has lost no time in transmitting the above-mentioned List of Domesticks to the Sheriff's Office.

The Undersigned is not aware that it is necessary for him to make any reply to the observations contained in the latter part of Mr. Gallatin's Note, further than to confirm the statement contained in the private note of Mr. Backhouse referred to by Mr. Gallatin, as to the Law and practice of this Country upon the questions of privilege arising out of the recent Arrest of Mr. Gallatin's Coachman :—and to supply an omission in that statement, with respect to the inviolability of the premises occupied by a Foreign Minister.

The Undersigned is not aware of any instance, since the abolition of Sanctuary in England, where it has been held that any particular place was protected from the intervention of criminal process ;—and he is not of opinion that the premises occupied by an Ambassador are entitled to such a privilege by the Law of Nations.

The Undersigned, however, considers it to be most agreeable to the spirit of that Law, at the same time that it is most consistent with the courtesy which the British Gov<sup>t</sup>. is always anxious to show to the Ministers of Foreign States residing in this Country, that their houses should not be entered without their permission being first solicited, in cases where no urgent necessity presses for the immediate caption of an offender ; and he trusts that the Instructions which have been given to the Magistrates, will effectually preclude the omission of such courtesy in any case which may arise hereafter.<sup>1</sup>

No one who is acquainted with the history of the incident which led to the enactment of the Statute of Anne will suppose that it was intended to be declaratory of the whole of an ambassador's privileges. The Government was anxious to propitiate Peter the Great, who had been offended at the arrest for debt of his ambassador

<sup>1</sup> P.R.O., F.O. 5/232.

in London, and besides instructing Lord Whitworth to present an apology, caused this Act of Parliament to be passed. It is doubtful whether modern Law Officers would take the same view of International Law on the subject as is attributed to their predecessors in Mr. Backhouse's private letter of May 18 to Mr. Laurence. As for Lord Dudley's reference to the abolition of sanctuary,<sup>1</sup> it must be confessed that it does not seem to bear at all on the question of the immunity of a public minister's hotel from entry by the local authorities.

Hall's opinion is this—

“ It is agreed that the house of a diplomatic agent is so far exempted from the operation of the territorial jurisdiction as is necessary to secure the free exercise of his functions. It is equally agreed that this immunity ceases to hold in those cases in which a government is justified in arresting an ambassador and in searching his papers ;—an immunity which exists for the purpose of securing the enjoyment of a privilege comes naturally to an end when a right of disregarding the privilege has arisen. Whether, except in this extreme case, the possibility of embarrassment to the minister is so jealously guarded against as to deprive the local authorities of all right of entry irrespectively of his leave, or whether a right of entry exists whenever the occasion of it is so remote from diplomatic interests as to render it unlikely that they will be endangered, can hardly be looked upon as settled.” <sup>2</sup>

Against this may be set the view of Dr. Hannis Taylor. After stating that an “ Envoy must not harbour criminals not of his suite,” and discussing the “ Right of asylum for political refugees in certain countries,” he proceeds thus to define the

“ Immunity of envoy's residence.” “ Subject to the foregoing exceptions the general statement may be made that while the exact limits of the inviolability of the hotel are not perfectly defined, a fair result of reasoning on principle and

<sup>1</sup> 21 Jac. 1, c. 28, Sects. 6, 7 ; § 6 repeals all acts previously passed regarding sanctuary, and § 7 enacts that no sanctuary or privilege of sanctuary shall hereafter be permitted or allowed.

<sup>2</sup> *Internal. Law*, 6th edit., 178, 179.

of a comparison of authorities is that the residence of the minister should enjoy absolute immunity from the execution of all compulsory process within its limits, and from all forcible intrusions. 'If it can be rightfully entered at all without the consent of its occupant, it can only be so entered in consequence of an order emanating from the supreme authority of the country in which the minister resides, and for which it will be held responsible by his government' (Mr. Buchanan, Sec. of State, to Mr. Shields, March 22, 1848)."<sup>1</sup>

It cannot be expected that diplomatic privileges should be defined by International Law or Custom with the exactness of Statute Law. Their enjoyment must in the last resort be regulated by considerations of international courtesy exercised by the Government of the receiving state, and tactfulness in maintaining them on the part of the diplomatic agent. It must be admitted that in this instance the American minister displayed that quality in the highest degree.<sup>2</sup>

§ 330. *Right of Asylum.*<sup>3</sup> By modern conceptions of this right, its exercise in favour of a fugitive criminal is excluded. He cannot, however, be taken out of the agent's house, if the latter refuse to deliver him up. In such a case the local authorities must confine themselves to surrounding the house so as to prevent the escape of the fugitive. The Government of the state to which the agent is accredited may complain to his own Government, and demand his recall, which no doubt would be accorded, or they might send him his passports. Neither can the carriage of the agent serve as a refuge.

§ 331. It is a well-established doctrine in Europe<sup>4</sup> that political refugees may not be harboured, but in Spain, during the civil war between Christinos and Carlists, again in 1848, and between the years 1865 and 1875, the practice was observed. From the correspondence respecting Mr. Bulwer's dismissal by the Spanish Government in 1848 (§ 423) it appears that the Duque de Soto-

<sup>1</sup> § 313.

<sup>2</sup> Cf. also Rivier, 500, and J. W. Foster, *Practice of Diplomacy*, 165.

<sup>3</sup> Ullmann, p. 184.

<sup>4</sup> Hall, 182.

mayor acknowledged to him that it was the custom in Spain for foreign heads of missions to afford asylum to persons pursued on account of political offences ; that all Spanish governments had allowed it, and all diplomatic agents had practised it, but he said that this custom had its limits. History shows that in 1841 certain conspirators having stormed the royal palace in Madrid, the Danish *Chargé d'affaires* gave them asylum, and in 1846, when their party was in power, it manifested its appreciation of his conduct by conferring on him the title of Baron del Asilo. Sotomayor himself was one of those who in 1841 had enjoyed protection at the Danish legation. But in 1848 the police entered this same diplomatist's house to search for Señor Salamanca, who in company with Sotomayor had been received there on the former occasion.

§ 332. In South American republics asylum has often been sought at foreign legations by political refugees, as, for instance, in May 1865, by General Canseco, who found refuge in the house of the American minister at Lima. Difficulties having arisen in connexion with this affair, the foreign diplomatic body met, and agreed on the following points : (1) Apart from the instructions on this head which might be given to agents by their governments and from treaty stipulations, there were limits to the right of asylum which prudence would counsel. (2) The instructions given by the Brazilian Government to their minister, which prescribed the greatest reserve in granting asylum, and that it should be limited to the time necessary for the refugee to obtain safety in some other manner.

After the revolution of November 6 of the same year, four ex-ministers of the administration which had been overthrown found refuge in the French legation, without the official knowledge of the new Government. Their arrest having been ordered by the Central Court, the French consul, M. Vion, in temporary charge of the

legation, refused to surrender them. In the meantime he had referred home for instructions. M. Drouyn de Lhuys in reply stated that the right of asylum was too much in conformity with feelings of humanity for France to consent to abandon it, but that it was solely requisite to facilitate the departure from the country of persons who could not remain there without personal danger and danger to the country itself. He pointed out that the agreement of the previous month of May led to the conclusion that the practice of according asylum constituted in America an immunity universally recognized by diplomatic usage, provided that it was restrained within the limits which prudence and good faith (*loyauté*) naturally enjoin on foreign agents, and he drew attention to the fact that the agreement alluded to had received the concurrence, not only of the European representatives, but also of a large majority of the agents of American States : namely, those of the United States, Brazil, Chile, Bolivia and Guatemala. M. Vion had been consequently fully authorized to make use of the privilege, of which the existence had been sanctioned by such recent declarations. With regard to the demand for the surrender of the persons in question, he added that M. Vion was all the more justified in his refusal, since neither usage nor treaty allowed a diplomatic agent to extradite any one of his own authority, without first informing his Government of the demand, and receiving from it special instructions.

M. de Lesseps, the French *Chargé d'affaires*, in communicating this answer from M. Drouyn de Lhuys to the Peruvian Government, insisted on the desirability of laying down definitely the doctrine on this matter, and of signing an agreement which would establish the practice of this " South-American " law (*droit*) in order to avoid difficulties and mistakes for the future. He consequently proposed to the Peruvian Minister for Foreign Affairs, in his character of *ex-officio* president of the diplomatic body, to call its members together



and propose to it the consideration of the question.

M. de Lesseps' proposal was made on April 24, 1866, and the meeting of the diplomatic body took place on January 15, 1867.

At this meeting, presided over by M. Pacheco, Peruvian minister for Foreign Affairs, there were present the diplomatic agents of Great Britain, Bolivia, Brazil, Chile, Italy and France.

M. Pacheco stated that the United States minister, being unable to be present, had sent his opinion in writing. He argued against the right of asylum, which, according to his views, had been introduced into Peru and other American republics, contrary to principles everywhere recognized, and on the pretext of a pretended humanity. He concluded, therefore, in favour of a return to the general law, *i.e.* the abolition of the right of asylum.

M. de Lesseps pointed out that this was not the object of the meeting, which was the discussion of the rules to be laid down in connexion with the right of asylum, and not its abolition. He declared that in any case it would be necessary to refer to the respective governments. In face of this declaration the conference was adjourned.

The written opinion of the United States minister was to the following effect : Peru is admitted to all the rights and privileges of a Christian nation ; and as such it ought to be placed in the situation of the United States of America, of Great Britain, of France and other Christian nations. Now, among these nations the doctrine of asylum could only be properly maintained if it was a question of protection against mob-violence. He declared, therefore, that as soon as a legal charge was brought, whether for a political offence (*délit*) or otherwise, he considered it to be the duty of the diplomatic agent in whose legation the refugee had sought asylum, to surrender him to the local authority which asked for his arrest. He cited, in support of his opinion, Wheaton, Woolsey and Polson. He recalled that this



was the practice followed by the United States, and that as long as he represented his country he would claim from Peru no right which his own Government would not accord to the Peruvian representative at Washington.

The sitting of January 15, 1867, was followed by interviews and *démarches*, which rendered it clearer than ever that the diplomatic body was not minded to accept the Peruvian proposal to abolish the right of asylum in the legations, while the Peruvian minister for Foreign Affairs was equally determined to obtain its suppression.

On January 29 a fresh conference was held, presided over by M. Pacheco, and attended by the Ministers of Bolivia, the United States, Chile, Brazil, Italy, France and Great Britain. The Chilian and Bolivian representatives held the view that the right of asylum should not be abolished, but that rules should be framed to provide against its abuse. The Brazilian Minister opined that abolition would tend to destroy diplomatic immunities. He pointed out that revolutions had always brought with them the right of asylum, in Spain, in Portugal, in Italy, and even in other countries, on the occasion of the revolution of 1848. The United States Minister held that the members of the diplomatic body had no right to lay down new rules of international law. He insisted that in the United States, France and England the right of asylum was no longer in discussion, and that it was a principle of elementary justice not to claim for one's self what one was not ready to grant to others.

M. Pacheco maintained that the framing of rules was surrounded by such difficulties that they would multiply disputes instead of getting rid of them, and that the only solution was to return to the general law ; there was no reason why Peru and other American republics should be placed in a different situation from other civilized nations ; that up to that time no acts of ferocity had been committed to justify the necessity of the right, etc.

The conference of January 29 had no better result than its predecessor. M. Pacheco had prepared a memorandum on the subject, which was not read, but it was agreed that this should be sent to the *doyen* for communication to his colleagues. This document—after citing a great number of writers on international law, and arguing that the right of asylum was not necessary, that it must, if admitted, be reciprocal, that it was a custom already abolished in Europe, that it had been made use of to withdraw individuals from ordinary prosecutions and even to enable them to escape civil obligations, and that it amounted to an attack on the sovereignty and independence of the nation—announced that—

(1) The Government would no longer recognize diplomatic asylum such as had been practised in the past. They would only recognize it within the limits assigned by the law of nations, which were sufficient for the solution of questions which might arise in exceptional cases.

(2) As diplomatic asylum existed in the South American states, and Peru was admitted to enjoy it for her legations in those states, she renounces this privilege as far as she is concerned, from the moment that she refuses it to the legations of those states in her territory.

The United States minister accepted the conclusions of the Peruvian Government in all their extent. Those of Bolivia and Chile reserved their answer, and referred to their governments. The Brazilian minister observed that the opinions of a larger or smaller number of authors could not have the force of a positive law capable of annulling privileges and immunities universally recognized as belonging to public ministers, and added that all the authors quoted by M. Pacheco had spoken only of criminals or malefactors, and that some even of them had hesitated between recognition and denial of the right of asylum as regarded persons of those classes.

§333. M. Pradier-Fodéré (from whom the preceding account of the question is taken)<sup>1</sup> holds the view that diplomatic asylum in such cases should be maintained, but restricted, be governed by rules, and be purged of the abuses which constitute a trespass on the sovereignty of states. And he quotes Calvo's words on the matter—

“ Il serait sans doute à désirer que chaque gouvernement déterminât avec précision l'étendue qu'il entend reconnaître à l'exercice de ce qu'on appelle le droit d'asile ; mais tant qu'aucune règle fixe n'aura été établie sur ce point, on ne saurait se guider en cette matière que d'après des considérations générales d'humanité et le sentiment des justes égards que les nations se doivent les unes aux autres. Nous admettons donc qu'au milieu des troubles civils qui surviennent dans un pays l'hôtel d'une légation puisse et doive même offrir un abri assuré aux hommes politiques qu'un danger de vie force à s'y réfugier momentanément.

Il nous serait facile de citer plus d'un exemple pour prouver qu'en Europe aussi bien qu'en Amérique le droit d'asile ainsi pratiqué a invariablement été respecté. Par contre, comme nous l'avons déjà établi pour les bâtiments de guerre, il nous paraît contraire à tous les principes de droit international d'étendre l'exterritorialité aux personnes coupables de crimes ordinaires et régulièrement condamnées par les tribunaux civils. Pour des crimes de cette sorte l'asile étranger ou diplomatique ne saurait exister ; et s'il est vrai que même dans ce cas l'hôtel d'une légation ne puisse être violé, il est certain également que l'agent diplomatique manquerait à tous ses devoirs en ne livrant pas spontanément ou à la première réquisition le coupable qui, abusivement, se réfugie chez lui.”<sup>2</sup>

§ 334. In 1889, a convention respecting international criminal law was concluded between Uruguay, Argentina, Bolivia, Paraguay and Peru,<sup>3</sup> by Article 17 of which it was provided that asylum in a legation should be respected in the case of persons prosecuted for political offences, with the obligation for the Head of the Legation immediately to acquaint the Government of the State

<sup>1</sup> ii. 79-91.

<sup>2</sup> § 1521.

<sup>3</sup> *Leyes usuales de la República Oriental del Uruguay*, 515.

to which he is accredited with the fact, which can demand that the refugee shall be sent out of the national territory with as little delay as possible. The Head of the Mission can demand in his turn the necessary guarantees for the refugee being allowed to leave the territory without interference.<sup>1</sup> The same principle is to be observed with respect to refugees who have found asylum on board vessels of war lying in territorial waters. But this article only applies as between the contracting parties.<sup>2</sup>

§ 335. Nevertheless, non-signatory Powers, such as the United States, Great Britain and France, besides others, have on various occasions granted diplomatic asylum to political refugees. During the civil war in Chile, in 1891, on August 28 as many as eighty were received in the United States legation, as many more at that of Spain, five at the French, two at the German, eight at the Brazilian legation.<sup>3</sup> The defeated President of Chile, José Maria Balmaceda, was received at the Argentine legation on the downfall of his administration, but his surrender having been demanded by his victorious opponents, he committed suicide three weeks later, rather than place his host in a position of difficulty. Chile had not signed the convention above quoted, though its delegates to Montevideo are said to have approved it. By October 8 most of the refugees had left, and there remained only fifteen in the United States legation, one in the German and five at the Spanish legation. According to a memorandum drawn up by the United States minister, Mr. Patrick Egan, of an interview on October 3 with the Chilean Minister for Foreign Affairs, Don Manuel A. Matta, the latter fully admitted that the United States legation had legitimately afforded asylum to the refugees. Safe-conducts to

<sup>1</sup> Alvarez, 73.

<sup>2</sup> These treaties were ratified by the contracting states at various times between 1889 and 1903 (*ibid.*, 107).

<sup>3</sup> *Foreign Relations of the United States*, 1891.

leave the country were, however, refused, and the same attitude was officially maintained by Matta's successor, Don Luis Pereira, but he undertook to assure the American minister that if they went down to Valparaiso they should not be molested. In consequence, Mr. Egan escorted the five remaining refugees to the port, and the Spanish minister on the same occasion accompanied the two who were still left at his legation. They engaged passages, some to Montevideo in the British steamer *John Elder*, others to Iquique on board the *Punto*, but as no assurance could be obtained that they would be free from arrest if the vessels by which they travelled put into Chilean ports, they eventually sailed, on January 19, 1892, for Callao, on board the United States cruiser *Yorktown*.

It appears from the correspondence that the American President approved the action of Mr. Egan, and he was instructed that "the right of asylum having been tacitly, if not expressly, allowed to other foreign legations, and having been exercised by our minister with the old Government in the interest and for the safety of the adherents of the party now in power, the President cannot but regard the application of a new rule, accompanied by acts of disrespect<sup>1</sup> to our legation, as the manifestation of a most unfriendly spirit." The minister was directed to furnish a copy of this instruction to the Chilian Minister for Foreign Relations.

W. F. Johnson, *America's Foreign Relations*, ii. 195, describes Mr. Egan as a "political refugee from Ireland, who had been a naturalized citizen of the United States for only a short time, and who was plausibly and probably correctly believed to have been appointed to the place by the Secretary of State, Blaine, in reward for his services in rallying the Irish voters of the United States to the support of the Republican ticket in 1888. He was not qualified by information, experience, or

<sup>1</sup> Arrest of persons leaving or visiting the legation.



disposition, or habits, for a diplomatic post. . . . His despatches to the Washington government strongly favoured Balmaceda, and were suspected of failing impartially to represent the situation and the progress of affairs. . . . An indemnity of \$75,000 was paid by Chile [for the killing of one and the beating of some other United States' sailors from the U.S.S. *Baltimore* in a drinking saloon on October 16, 1891] and the affair was thus disposed of ; but it left much ill-feeling behind it, which endured for years. It may be added that this feeling was intensified by Egan's course in making his official residence an asylum for dozens of Balmaceda's partizans whom he kept there for some time in defiance of the Government."

§ 336. An early case of refusal to recognize the right of asylum in favour of political criminals occurred in 1540, when the house of the French Ambassador at Venice was forcibly entered ; he had given asylum to certain Venetian traitors in return for their disclosing to him the instructions of Bodmer, Venetian envoy to Constantinople, to treat for peace.<sup>1</sup>

§ 337. In 1702, there was a dispute on a similar case between the Comte de Chamailli, French Ambassador at Copenhagen, and Schested, Cabinet Minister of the King of Denmark. A certain Comte de Schlieben, who had been arrested on a charge of embezzling money advanced to him for recruiting a regiment for the Danish service, escaped from his guards, who pursued him to the vicinity of the French embassy. Chamailli's servants turned out, and rescued him from the guards, and the Ambassador, appearing at a window, told them that Schlieben was under his protection. On that they withdrew. Chamailli had a *procès-verbal* drawn up, in which he included the depositions of the Danish guards and of the sentinels at his door, and wrote to Schested to demand satisfaction

<sup>1</sup> Flassan, ii. 8 ; Wicquefort, i. 414.



for violation of the respect due to his residence. Schested answered by a letter, to which Chamailli returned an insolent reply. He was recalled shortly afterwards, and a secretary was left in charge of the French embassy.<sup>1</sup>

§ 338. *Case of Ripperda.* Duke Jean-Guillaume de Ripperda was a Dutch officer in the employment of the States-General, and afterwards their Minister Plenipotentiary at Madrid.<sup>2</sup> Here he gained the confidence of Philip V, who took him into his service as minister of Finance and Foreign Affairs, and created him a duke. He owed his promotion and the power he had acquired to his successful negotiation of an understanding between the Emperor and the Catholic king. But after he became a minister he veered round, opposed the policy of the Emperor and bestowed his confidence on the British and Dutch representatives. The Imperial Ambassador succeeded in inducing the king to deprive Ripperda of the department of finance, on which he resigned his other offices, and, taking alarm at the readiness with which his resignation was accepted, fled for refuge to the house of the British Ambassador, William Stanhope (afterwards the first Lord Harrington), during the temporary absence of the latter (May 15, 1726). Stanhope was not very pleased at the advantage thus taken of his good nature, and in order to put himself right with the King, asked for an audience, at which he related what had passed between Ripperda and himself, and gave an assurance that he would not allow Ripperda to leave the embassy until he had given up some important state papers alleged to be in his possession. Immediately afterwards soldiers were posted in the vicinity of the embassy, with orders to examine all persons and carriages issuing from it. Stanhope at once communicated with the other Ambassadors, in order to procure their help in opposing this proceeding, contrary to the rights and

<sup>1</sup> Flassan, iv. 232.

<sup>2</sup> C. de Martens, i. 174.

privileges of the diplomatic body. The Spanish Court, however, began to regret that it had not from the first accused Ripperda of some common crime, in which case Stanhope would not have given him asylum. It addressed letters to Stanhope, urging him to prevail on Ripperda to quit the embassy and rely on the precautions which the king had promised to take for his protection against possible outrage on the part of the populace. But Stanhope came to the conclusion that the intention was to arrest Ripperda as soon as he quitted the roof of the embassy, and ceased to urge him to leave. In the end, the Spanish Government decided to call the Council of Castile together, and to submit to it the question "whether, without a violation of the Law of Nations, the right existed of carrying off from the house occupied by the Ambassador of Great Britain, the Duke of Ripperda whom His Majesty had dismissed from his service, and who had taken refuge with the minister in question."

The Council decided that the Duke had been guilty of *lèse-majesté* and that the King could take him by force from the embassy, without thereby infringing in the slightest the privileges accorded to Ambassadors, and consequently without violating the Law of Nations.

Thereupon two officers at the head of a body of sixty soldiers were sent at an early hour to the embassy, with orders to enter as soon as the doors were open, and to deliver to Stanhope a letter informing him of the intention to seize Ripperda and all the papers found in his possession, but to show all proper respect to the Ambassador and not to use violence towards Ripperda, except in case the Ambassador refused to deliver him up, or an attempt was made to resist his arrest. Stanhope, seeing that his house was already entered by armed soldiers, and that he must yield to force, confined himself to a formal protest against the disregard of what was due to his official character and privileges. Ripperda was arrested and his papers seized without any

violence or disorder on the part of the Ambassador's servants.<sup>1</sup>

On the affair being reported to the British Government by the Ambassador, and the Spanish Ambassador in London, Marquis de Pozzobueno, having also communicated a circular in which his Government set forth their view of the matter, the Duke of Newcastle addressed to Pozzobueno a Note on June 20, pointing out that the despatch of soldiers to the embassy to seize Ripperda, without previously communicating the decision of the Council of Castile to Stanhope, and waiting to see what effect it produced on his resolution not to dismiss his guest, was wrong, as only an extreme necessity could justify the violation of the immunities of an Ambassador's house, and he expressed the hope that the Catholic King would see that it was to his own interest to make the necessary reparation.

Stanhope wrote again to the King of Spain on September 25, expressing the surprise of King George that satisfaction had not yet been given for the insult to his embassy, to which the Spanish minister replied that the King saw no reason to concern himself further about the affair, nor to enter into any arrangement in respect of it. The correspondence between the two Courts on other matters became more and more embittered, until finally hostilities broke out in the following year. Peace was not restored until the signature of the Treaty of Seville on November 9, 1729, in Article I of which compact it was stipulated that there should be "an oblivion of all that is past."<sup>2</sup>

Ripperda escaped from his confinement at Segovia in 1728, and made his way in succession to Portugal, Holland and England. He ended in Morocco, and died at Tetuan in 1737.

<sup>1</sup> C. de Martens, i. 195. It appears from the Spanish Circular of May 25th, 1726, that the privilege of asylum at foreign embassies covered common-law crimes (*délits communs*) in Spain, at least, though not in all countries, but was not held to extend to political offences.

<sup>2</sup> Jenkinson, ii. 307.

§ 339. In 1747, a Russian subject named Springer, domiciled at Stockholm, was accused of high treason against the King of Sweden, but before delivery of his sentence succeeded in making his escape and in taking refuge in the house of Colonel Guy Dickens, the British Minister.<sup>1</sup> Thereupon a watch was placed upon the legation, and a request was made for the extradition of the fugitive. After considerable discussion between the Swedish Government and the British Minister, the latter consented to surrender the man, but protested against the violation of the Law of Nations and of the privileges of diplomatists which he alleged had been committed, declaring that he only yielded to the threat of force being used if he refused.

Guy Dickens sent a circular letter to his colleagues, in which he admitted that he had seen and recognized Springer the very day on which he had entered the legation, but defended the view he had taken of the affair, and especially on the ground that Springer was an innocent person, accused unjustly. This document found its way into the foreign press, and led to a circular from the Swedish ministry to the diplomatic body at Stockholm, justifying the proceedings to which recourse had been had, and protesting against Colonel Dickens' pretensions to constitute himself a judge of Springer's guilt or innocence. Guy Dickens, having reported the whole matter to London, received instructions to address to the King of Sweden a memorial, in which it was laid down as an incontrovertible maxim that the residence of a foreign Minister ought to enjoy the right of asylum, so long as the right was not abolished by mutual consent, and that a legation house cannot be violated, even when the extradition of a criminal is refused, the only resource open to the Government of the country being to complain to the Sovereign of whom the Minister is the diplomatic representative. He was to ask that the King would examine into the conduct of his ministers, and

<sup>1</sup> Ch. de Martens, i. 326.

accord satisfaction as open and manifest as the outrages and violence practised towards him had been public. He concluded by reiterating a demand previously made for the punishment of an insult offered by the night-watch to his house and servants some months previously, for which no satisfaction had yet been obtained.

The Swedish Government then instructed the King's Minister in London to present a *mémoire* in reply to the British Secretary of State, denying the assertions of Colonel Dickens as to the treatment he had experienced in the Springer case, and insisting on satisfaction for the insulting manner in which he had, in his memorial under reply, attempted to draw a distinction between the acts of the Swedish ministers and the orders of the King. The *mémoire* also discussed at length the complaints about the denial of redress in connexion with the alleged insult by the night-watch, and asserted that Colonel Dickens was himself to blame for any failure to obtain satisfaction, because he had refused to allow his servants to testify until the persons accused by him were thrown into prison. It wound up by saying that the King of Sweden had nothing more at heart than to afford to the King of England on all occasions every possible mark of attention, and desired nothing else than to see at his Court, in the place of Colonel Guy Dickens, a minister who could render a faithful account of his sentiments to His Britannic Majesty.

The end was that Colonel Dickens was instructed to quit Stockholm as soon as possible without taking leave of the King, and the Swedish Minister in London received similar orders in consequence.

§ 340. *Franchise du Quartier*. This expression covers two privileges formerly asserted by Ambassadors in several countries: namely, the right to prevent the arrest of persons dwelling in the vicinity of their embassy houses, and the exemption from octroi-tax of supplies brought in, nominally for their use. These practices



were accompanied by serious abuses. Sismondi says

“ Les ambassadeurs ne voulaient permettre l'entrée de ces quartiers à aucun officier des tribunaux et des finances du Pape. En conséquence, ils étaient devenus l'asile de tous les gens de mauvaise vie, de tous les scélérats du pays : non-seulement ils venaient s'y dérober aux recherches de la justice, ils en sortaient encore pour commettre des crimes dans le voisinage : en même temps ils en faisaient un dépôt de contrebande pour toutes les marchandises sujettes à quelques taxes.”<sup>1</sup>

§ 341. A case of this sort, in which France became involved, occurred in 1660, during the pontificate of Alexander VII.<sup>2</sup> On June 21, two or three constables went to arrest for debt a trader lodged near the palace of the Cardinal d'Este, who was cardinal *comprotecteur*<sup>3</sup> des affaires de France. In that character he claimed the *franchises du quartier*, together with the right of fixing its limits. Several of His Eminence's people tried to prevent the police from executing the warrant, on the pretext of the *franchises*, and on their persisting, the Cardinal's servants drew their swords and forced the officers to withdraw.

Don Mario Chigi, brother of the Pope, and commander of the papal troops, alleging that the privilege of the Cardinal's palace did not extend as far as was asserted, ordered the chief of police to proceed to the trader's house with sufficient men to effect the arrest. On this becoming known to the Cardinal's people, they hastened to the spot in great force, attacked the chief of police, killed three of his men, wounded several more, and rescued the prisoner. The Cardinal, apprehensive of the consequences to himself, sent his chamberlain to Don Mario to offer an apology, alleging that he had had no share in what had passed. The apology was received

<sup>1</sup> xxv. 552.

<sup>2</sup> Fabio Chigi, who had been Mediator at the Congress of Münster.

<sup>3</sup> He was a relative of the Dukes of Modena. The *protecteur attitré* was Cardinal Antonio Barberini.



very coldly, but nevertheless the affair was hushed up by the intervention of Cardinals Barberini and Pio, the Pope consenting to grant absolution for the offence.

Cardinal d'Este, besides being *comprotecteur* of French affairs, had a commission to support the claim of the Dukes of Parma and Modena to certain domains annexed to the *chambre apostolique*, which he had pushed with all the haughtiness of a Minister speaking in the name of a powerful monarch and with the zeal of a man working for the interest of his family. He felt that he was disliked by the Pope, and the latter, who did not love him at all, was not disposed to listen to his solicitations in the affair of the Dukes. On the contrary, he wrote to the French Court, urging the necessity of appointing an Ambassador. Louis XIV selected for this office the Duc de Créqui, a noble of high rank, but unfitted by his profession as a soldier for the peaceful duties of a diplomatist. Before leaving Paris he had offered to call on the *nuncio* Piccolomini, and had demanded that the latter, contrary to usage, should give him the seat of honour (*lui donner la main*) in his own house, on the ground of his being *duc et pair*. Piccolomini, in order to avoid the question of etiquette, proposed a meeting at the house of a third party, which Créqui declined. On arriving at Rome, he refused to pay the first visit to the Pope's relations. Several Roman nobles attached to the interests of the French court, represented to him the propriety of complying with this usage, but in vain. The King, however, on being informed of this matter, ordered Créqui to satisfy the Pope, and he had to call on the Papal nephews. But as this civility was performed with reluctance, far from bringing about a good understanding, it only served to increase the mutual coldness. At last, on August 20, 1662, a scene took place which led to an open rupture between the two Courts, and nearly caused a war, in spite of the inequality between the forces of the two states. On that day some Frenchmen belonging to the Ambassador's suite

quarrelled with soldiers of the Corsican regiment of of papal guards and beat them. The alarm having been given to the barracks, 400 Corsican soldiers fell upon all the Frenchmen they met, and drove them to the palace of the Ambassador, who happened to be at home. On hearing a great tumult and the firing of musket shots, he came out on his balcony to ascertain the cause of the row, and, the irritation of the Corsicans being very great, some of them fired at the balcony. Later in the day, a troop of them falling in with the Ambassadors's carriage as she was returning home, fired at it, killed a page who rode at the carriage door, and wounded two or three of the escort.

As soon as Don Mario was informed of these occurrences he sent one of his gentlemen to disavow the proceedings and to express his regret, but the Duc de Créqui, regarding the incident as a consequence of the hostility of the Pope's relations, would scarcely listen to the message. The culprits fled during the night, and their escape was attributed to the connivance of Cardinal Imperiali, governor of the city.

On the following day the Pope summoned a consistory, from which the French and Spanish cardinals absented themselves. He deplored the unhappy events of the preceding day, and immediately despatched a courier with letters for the King, in which he endeavoured to soothe the wrath of the latter. The Duc de Créqui, on his side, was not idle. He sent off to Paris an account of the business which no doubt differed a good deal from that furnished by the Roman Court. Moreover, he armed all his people, as well as a large number of other persons, and never stirred out of doors without a considerable guard. The Pope, annoyed at precautions which he regarded as offensive, begged the Duke to disarm his men, but without success. The Ambassador declared that he had been forced to take this measure for his own safety.

When Créqui's report reached Paris, the King held a

grand council, at the conclusion of which the Comte de Brienne, a Secretary of State for Foreign Affairs, called on the *nuncio*, whom he required in the King's name to leave on the following morning for Meaux, and to remain there until further orders, acquainting him that this step was necessary in order to guarantee his person from an accident similar to what had befallen the French Ambassador at Rome. The *nuncio* replied that he desired first to be heard, and he went to Court the same night for that purpose. He was unable to see any one but the under-secretary Lionne, to whom he expressed the bitter regret of the Pope at what had occurred, informing him at the same time of the order given by His Holiness for the punishment of the guilty persons. He then, in order to avoid the appearance of having been exiled, proceeded to Saint Denis, instead of going to Meaux, and a guard of forty musketeers was sent thither to keep watch over his movements.

Things looked as if they would calm down, when a gentleman arrived with the news that Créqui had been obliged to leave Rome on September 2, thus anticipating the King's order to come away. Louis, more irritated than ever, sent an order to the *nuncio* to quit his dominions immediately, which he did on September 14, escorted to the frontier of Savoy by fifty musketeers, who did not allow him to speak to any one on the journey.

The consequence of this quarrel was that France occupied the Comtat Venaissin and Avignon, an expedient frequently resorted to for coercing the Papal Government, and despatched a body of troops into Parma and Modena, with orders to invade the States of the Church. Thereupon the Pope gave way, and on February 12, 1664, a treaty was signed at Pisa by Bourlemont (who replaced Créqui in charge of the negotiation) and Rasponi on the part of the Pope, by which satisfaction was accorded to the King of France, and the papal territories which had been occupied were restored.

The Pope's nephew, Cardinal Chigi, was despatched as legate *à latere* to Paris to apologize to the King, and there the matter ended.<sup>1</sup>

In the opinion of a modern French writer it is clear from the correspondence that Louis XIV behaved in this affair with the most unjustifiable insolence towards the Pope.<sup>2</sup>

§ 342. A similar affair occurred at Madrid, whither Louis XIV had in 1679 sent the Marquis de Villars as Ambassador.

In 1680, a dispute arose about the exercise of his functions by an officer of justice in the neighbourhood of the embassy without permission of the Ambassador. It was even said that he could not pass through with the symbol of his authority, a white wand, displayed. The second privilege claimed was the exemption from import duties on articles for the Ambassador's own consumption. This latter had given rise to such abuses, that it had been commuted for an annual sum of 16,000 livres given to each Ambassador by the King of Spain. The first privilege had been observed so strictly, that some of the foreign Ambassadors had caused officers of justice to be hanged on the spot ; the more moderate had been contented with having them beaten.

Towards the end of January 1680, the district magistrate of Madrid, accompanied by his constables, passed in open day through the French Ambassador's quarter. The latter only heard of it afterwards, but at once sent him a message to the effect that he must be aware of the violation of diplomatic privileges which he had committed, and that he must take care not to infringe on them a second time. The magistrate excused himself on the plea that he did not know it was the Ambassador's quarter. Nevertheless, ten days later, when the Ambassador was from home, he passed through again.

<sup>1</sup> Flassan, iii. 301.

<sup>2</sup> Gérin, in *Revue des questions historiques*, x. 66.

Villars complained to the minister, who replied in writing, that the King, in virtue of a declaration of the year 1671, had resolved to treat the Ambassadors of every prince at Madrid as those of Spain were treated at their courts ; and, seeing that in France the Spanish Ambassadors enjoyed no privilege nor jurisdiction outside their palace, by the door of which officers of justice were in the habit of passing, he intended that in future the French Ambassador at Madrid should have no more privileges than the Ambassador of Spain had at Paris.

Villars responded that his sovereign would willingly enter into reciprocal arrangements respecting the treatment of Ambassadors. It would be fairer, however, that as the Spanish Ambassador at Paris enjoyed special favours, such as the privilege of presenting himself before the King and Queen whenever he chose, of accompanying the King to the chase and on other occasions without having to ask leave, of remaining seated at public festivities and ceremonies, and of driving about Paris in a coach and six just as he liked, the privilege or *franchise* should continue to be recognized. He offered to refer the question to the King, and asked that in the meantime things should remain provisionally *in statu quo*. The Secretary of State in a second Note answered that the King of Spain persisted in his resolve, and that the Ambassador would consequently be deprived of the immunities in question and of the *franchise du quartier*.

The Court of France was much hurt at the manner in which the question had been treated by the Spanish Court, and instructed the Ambassador to demand public satisfaction for the insult. In the end the King of Spain gave way, and sent the Marquis de los Balbasès to Villars, to deliver to him a rescript to the effect that the Spanish Ambassador at Paris had been instructed to offer complete satisfaction ; that the immunities and privileges of the quarter were now restored, and that



exemption from customs duties would always have been granted if the Ambassador had applied for the payment of the allowance in respect of them.

It appears that, in spite of the suppression of these diplomatic privileges in 1671, most of the Ambassadors had continued in their enjoyment.<sup>1</sup>

§ 343. In 1688, there was a further quarrel over this matter between the Pope and the King of France. Several Popes had tried to abolish these privileges and immunities, but the Ambassadors had always refused their assent, and had continued to evade the papal ordinances. Innocent XI, however, induced the Emperor, the Kings of Spain (in 1683), Poland (in 1680), and England (in 1686), and the Republic of Venice to agree to their abrogation.<sup>2</sup> But when he proposed to Louis XIV to concur with them "in assuring tranquillity and good order" in the city, the King replied that he had never conformed to the example of others, and that it was for him to set precedents.

The Pope then informed all crowned heads that he would in future receive no new Ambassador unless he previously renounced the *franchise du quartier*.

§ 344. When the Duc d'Estrées, French Ambassador, died on January 30, 1687, the papal authorities sent police, after the funeral, to the Piazza Farnese, in the vicinity of the Ambassador's lodging, to perform acts of jurisdiction, in spite of the opposition of Cardinal d'Estrées, who claimed for himself, as "protector" of French interests, all the privileges that his brother had enjoyed as Ambassador. He subsequently left Rome, and the Pope asked Louis XIV not to send him an Ambassador until the question was settled. But Louis in disregard of this request appointed the Marquis de Lavardin as Ambassador at Rome, who arrived there on November 16, 1687, with an escort numbering one hundred, all of whom had rank as naval officers, and

<sup>1</sup> Flassan, iv. 25.

<sup>2</sup> Phillimore, ii. 211 n, quoting Miruss.



proceeded to take up his residence at the Palazzo Farnese, surrounded it with his men, and announced his determination to assert his privileges. The Pope consequently refused to receive him in audience, and he became *ipso facto* excommunicated, in virtue of a bull of May 12, which imposed that penalty on whosoever should attempt to exercise the privileges abrogated by previous decrees. Harlay, the *procureur-général* of the *Parlement* of Paris, filed an *appel comme d'abus* against the bull of excommunication ; the *Parlement* pronounced a decree in favour of employing the royal authority for the conservation of the *franchises et immunités du quartier*, and had it posted on the door of the *nuncio* Ranucci at Paris. It was also placarded at Rome on the doors of St. Peter's and elsewhere in the city. Louis sent another hundred officers to Rome, besides invading Avignon and the Comtat Venaissin. Moreover, he had the *nuncio* arrested and sent to Saint Lazare as a hostage, where he was kept in confinement during eight months. The Pope nevertheless persisted in refusing to receive Lavardin as Ambassador until he received the satisfaction due to his insulted sovereignty. Lavardin was then recalled from Rome, and the officer who was watching the *nuncio* was withdrawn ; the *nuncio* returned to Rome without being able to obtain a farewell audience, and died soon after his arrival. When the Pope died, on August 12, 1689, Louis sent de Chaulnes as Ambassador to the Sacred College with orders not to occupy the Palazzo Farnese nor to exercise the *franchises*. The new Pope, Ottoboni, who was elected on October 6, took the title of Alexander VIII, and Louis XIV, in order to manifest his goodwill, instructed de Chaulnes, who now succeeded Lavardin as Ambassador to the Papal Court, to desist from exercising the *franchises*. The question was not, however, finally laid to rest till 1693, in the pontificate of Innocent XII, when the French King at last consented formally to abandon the contested privileges.<sup>1</sup>

<sup>1</sup> Flassan, iv. 97. Gérin, in *Revue des questions historiques*, xvi. 3, 8.

§ 345. A similar case occurred at Genoa in 1759. The French Ministers to that republic had from time immemorial been entitled to forbid agents of the police passing in front of their legation-house. The Chevalier de Chauvelin, Envoy Extraordinary, having heard that several *sbirri* had appeared in front of his house, directed his people to be on the watch, and to prevent a recurrence. A man whom they took to be a *sbirro* came along, and, though warned to turn back, persisted in going on. They fell on him and beat him. It was afterwards discovered that he was not a *sbirro*, but the keeper of one of the city gates. The Genoese Government caused a complaint to be addressed to the French Envoy, who, recognizing that he had been misled by his servants, placed them at the disposal of the Genoese magistrate. He, not to be outdone in courtesy, at once requested M. Chauvelin to set them at liberty.

Flassan remarks on this case that, if the French Minister loyally repaired the error of his servants, it must be admitted, on the other hand, that the alleged immemorial usage which forbade *sbirri* to pass in front of the French legation was ridiculous, and insulting to the Genoese Government to whom the Minister was accredited. How could a diplomatist endowed with common sense demand, by the use of violence, the maintenance of such a childish right, and expose himself, either to quarrel with the Government, or to create an uproar among the populace, or to the commission of a mistake by which he brought on himself the humiliation of having to make reparation?<sup>1</sup>

§ 346. *A Diplomatic Agent preserves his Domicile in his own Country.*

The diplomatic agent and the members of his family, household and official staff preserve their domicile in their own country, and children born to them in the country where they are only temporarily residing, have

<sup>1</sup> Flassan, vi. 133.

the nationality of their parents.<sup>1</sup> Where by the local law all persons born in the country become subjects of the State, children of foreign diplomatists are not thereby affected, and consequently do not possess a double nationality.

<sup>1</sup> Hall, 183 ; Ullmann, 192.

## CHAPTER XXI

### RIGHT OF DIPLOMATIC AGENT TO THE EXERCISE OF HIS RELIGION

§ 347. *Chapel within the Agent's Residence.* It is universally recognized that a foreign diplomatic agent is entitled to have a chapel within his residence, wherein the rites of the religion which he professes may be celebrated by a priest or minister. This does not include the right of tolling a bell.<sup>1</sup> The spread of religious toleration in modern times has rendered possible the erection of public places of worship of religions other than that professed by the State, but usually the use of bells is not permitted, and in Spain formerly it was required that the exterior of the building should not indicate the purpose to which it was devoted. In Constantinople the Roman Catholic churches are partly under Austrian, partly under French protection, the Orthodox under Russian protection.<sup>2</sup>

Tous les Ambassadeurs, les Envoyez & les Residens ont droit de faire librement dans leurs maisons l'exercice de la Religion du Prince ou de l'Etat qu'ils servent, & d'y admettre tous les sujets du même Prince qui se trouvent dans le país où ils resident. <sup>3</sup>

Phillimore deduces this right as a corollary from the right to enjoy the most perfect and uncontrolled liberty of action within the precincts of his hotel (which, of course, excludes the keeping of a gambling table in countries where public gambling is prohibited, or keeping any kind of shop).

<sup>1</sup> Calvo, ii. 326; Ullmann, 189.

<sup>2</sup> De Martens-Geffcken, i. 113.

Callières, 160.

“Strictly speaking, however, this privilege is confined to himself, his suite, and his fellow-countrymen commorant in the foreign land ; for, although he cannot be prevented from receiving native subjects who come to his hotel, yet it is competent to the State to prohibit them from going to the hotel for this or any other purpose.”<sup>1</sup>

According to Wicquefort,<sup>2</sup> the State might require that the religious services be performed in the native language of the Ambassador. This, however, does not appear to be a tenable position. The sanctity of the hotel must be violated in order to ascertain the language, and certainly there never could have been any semblance of reason for preventing the Ambassador or his chaplain from the use of the universal or Latin language in their devotions. This restraint by the State must be placed, if at all, upon her own subjects.

“Since the period of the Reformation, general International usage has sanctioned the right of private domestic devotion by a chaplain in the hotel, which, so long as it is strictly private, seems to claim the protection of natural as well as conventional International Law. Two conditions, however, have formerly accompanied the permission to exercise this right : one, that it should be permitted to only one minister at a time from one and the same court ; another, that there should not be already a public or private exercise of the religion existing and sanctioned without the limits of the hotel.

“Having regard to this latter condition, the Emperor Joseph II, in 1781, having permitted to the Protestants at Vienna the liberty of meeting for the private exercise of their devotions, insisted on the chapels of the Protestant ambassadors being closed. The right to have places of worship was subject to certain restrictions, *e.g.*, the ringing of a bell was prohibited.

“There does not, however, seem to be any foundation in principle for this very arbitrary act ; more especially as Protestant is a mere term of negation, under which are included worshippers of very different tenets.

“The only sound principle of law on this subject is that already mentioned, *viz.* Religious rites privately exercised within the ambassadorial precincts, and for his suite and countrymen, ought not to be interfered with.

<sup>1</sup> Phillimore, ii. 213.

<sup>2</sup> i. 417.

“The erection of a chapel or church, the use of bells, and of any national symbol, is a matter entirely of permission and comity.”<sup>1</sup>

The Papal Government informed the Prussian envoy, in 1846, that services in the Italian language in the chapel of the legation would not be tolerated.<sup>2</sup>

<sup>1</sup> Phillimore, ii. and Holtzendorff, iii. 659.

<sup>2</sup> Holtzendorff, iii. 659.



## CHAPTER XXII

### POSITION OF DIPLOMATIC AGENT IN REGARD TO THIRD STATES.

§ 348. When passing through in time of peace—§ 349. Diplomatic agents accredited to the Holy See—§ 350. Case of Rincon and Fregoso in 1541—§ 351. Maret and Sémonville in 1793—§ 352. Soulé in 1854—§ 353. Venezuelan envoy to France, served with process at New York—§ 354. Action against same envoy commenced in London—§ 355. When passing through enemy territory—§ 356. Case of Maréchal Belleisle—§ 357. Holdernes case—§ 358. When the agent is accredited to a state at war with the state he is traversing. Case of Marquis de Bonnac—§ 359. Agent's situation with regard to other states—§ 360. Case of Marquis de Monti—§ 361. Van Hoey's case—§ 362. Agent accredited to a belligerent, in territory invaded by the other belligerent—§ 363. Case of Count de Broglie—§ 364. Agent in invaded territory, privileges may be restricted—§ 365. Diplomats in Paris during the siege—§ 366. Mr. Washburne's position—§ 367. Canning's view in 1823.

§ 348 (i). *As to the position of a Diplomatic agent passing through the territory of a third state in time of peace—*

Schmelzing lays it down that

“Envoys enjoy the totality of diplomatic privileges only in the territory of the state to which they are sent and to which they are accredited. They cannot consequently claim the privileges of inviolability in a third country which they touch on their journey through, in going or returning, or in which they stay for a lengthened period, unless they deliver credentials to the sovereign. The diplomatist is only a private person when he traverses a third state, and as such he is not entitled to claim diplomatic privileges for himself, his suite or his property.”

Rivier, however, is of opinion that

" the agent passing through a third state when going to or returning from his post is more than a mere distinguished traveller. He is exercising his own state's right of legation in passing through under the circumstances indicated. By hindering or molesting him you interfere with the rights of both states. Consequently, as soon as his character is revealed the agent becomes entitled to claim for himself and his suite, in all matters involving the rights of those two states, respect and complete security, *i.e.*, inviolability. There is, however, no need to regard him as entitled to extritoriality. If he stays in a third state, certain favours, such as the exemption from the payment of import duties and other taxes, may be accorded to him as an act of courtesy, without his having any right to demand it. The passage or stay of the agent will be allowed only if it is harmless, of which the state in whose territory he is can alone be the judge. That state will adopt such precautions as it may judge to be suitable. If passage is accorded, the state can impose a limit on its duration, fix the route to be taken, and prohibit the agent from stopping *en route*. But if the two states are at war, the agent may, in default of a safe-conduct, be made prisoner. It is assumed that the agent is travelling or sojourning in the character of a public personage. If he is there solely for his own pleasure, or in pursuit of some merely private object, he is merely a distinguished personage, neither more nor less." <sup>1</sup>

Schmelzing continues—

" It is, however, the custom that in time of peace foreign envoys traverse the territory of a third state freely and without hindrance, and may pass a time there, and that certain privileges and marks of respect are accorded to them similar to those enjoyed by regularly accredited diplomatists. This political courtesy rests upon no legal obligation, and consequently, in case of dispute with the state from which it is claimed, reliance will be had on the essential difference between an envoy formally accredited, and one who is not accredited." <sup>2</sup>

Wicquefort's advice to Ambassadors passing through the territories of a third sovereign is that they should carry a credential or a passport to show who they are.

<sup>1</sup> 508.

<sup>2</sup> ii. 222.

An ordinance of the States-General of September 9, 1679, accorded inviolability to agents passing through the United Provinces, just as if they were accredited there.

In the present day the only precautions to be recommended to the agent who has to cross a third country are that he should provide himself with a passport in which his official character is detailed, and apply beforehand to the diplomatic representative of the third state in his own country for permission to have his luggage passed through the Custom house without examination. Or, the matter can be arranged through the diplomatic representative of his own country at the capital of the state he proposes to traverse. If he is returning home from his post, he will be able to obtain the same privilege through his colleague at the post he is quitting. The privilege will be readily accorded to him, and all he will need to do on arriving at the frontier is to produce his passport and visiting card, and satisfy himself by inquiry that the necessary orders have been received by the Custom-house officer.

§ 349. The position of diplomatic agents accredited to the Holy See and of the papal diplomatic agents is analogous. It is regulated by Article XI of the Law of Guarantees of May 13, 1871, as follows—

“The envoys of foreign governments accredited to His Holiness will enjoy in the kingdom all the prerogatives and immunities appertaining to diplomatic agents, in accordance with international law.

“The penal sanction for offences against such representatives shall be the same as that which would be applied in respect of foreign envoys accredited to the Italian Government.

“The envoys of His Holiness to foreign governments shall possess within the territory of the kingdom the usual prerogatives and immunities, in accordance with the same law, both in going to their posts and in returning.”<sup>1</sup>

<sup>1</sup> De Castro y Casaleiz, ii. 456.

When Italy declared war against Austria-Hungary, in 1915, it was anticipated that a question might arise as to the position of the diplomatic representatives of the Germanic Powers accredited to the Pope, as they resided outside the exempted buildings occupied by His Holiness; but they prudently avoided all difficulty by retiring beyond the Italian frontier. For some time past the practice has been, when an ecclesiastical diplomatist desires to travel to his post, for an *employé* of the Vatican to take to the Consulta the Pontifical passport and obtain the Italian *visa*.

§ 350. An early case of interference with the peaceful passage of diplomatic envoys through the territory of a third state is the seizure of Antonio Rincon and Cesar Fregoso, French Ambassadors to Turkey and Venice, on their voyage down the Po in 1541, by the Marquis del Guasto, Governor of Milan for the Emperor Charles V. He caused them to be murdered and their papers to be seized.<sup>1</sup>

§ 351. In 1793, the French revolutionary Government despatched Maret and Sémonville on a mission to Switzerland and Naples. In passing through the territory of the Grisons they were arrested and carried off by order of the Austrian Government. They were stripped of their property and confined in the citadel of Mantua. This act was a manifest violation of International Law.<sup>2</sup>

§ 352. In 1854, the French Government refused to Mr. Soulé, United States Minister at Madrid, permission to stop in Paris on his way back to his post, on the ground that his antecedents had attracted the attention of the authorities charged with the maintenance of public order. Mr. Soulé was born in France and had been naturalized in the United States. In replying to a request for explanation made by the United States

<sup>1</sup> Flassan, iii. 9 ; Prescott and Robertson, v. 81.

<sup>2</sup> Sorel, *l'Europe et la Révol. Franc.*, iii. 431.

representative at Paris, Drouyn de Lhuys, minister for Foreign Affairs, stated that if Mr. Soulé merely intended to pass straight through to Madrid no objection would be raised, but that, as he had not been authorized to represent his adopted country in his native land, he was for the French Government merely a private person and as such subject to the ordinary law. Herr Geffcken considers that, in stating that he could only be regarded in the light of a private person, the French minister went too far. As Mr. Soulé gave an assurance that he simply intended to pass through, the incident terminated. Calvo (§ 1535) expresses the same opinion on this case.<sup>1</sup>

"Mr. Soulé, born in France but a naturalized citizen of Louisiana, being of a fiery temperament, soon after his arrival in Madrid took affront at the conduct of the French ambassador, which resulted in two duels, one between Soulé's son and the Duke of Alva, the brother-in-law of the Emperor Napoleon III, and the other between Soulé and the French ambassador. After these events, in 1854, the American minister, under orders from Washington, spent two weeks in Paris, and went thence to London for conference with the American minister. While returning to his post he was met at Calais by the commissioner of police, and told that he 'would not be allowed to penetrate into France without the knowledge of the government of the Emperor,' and the commissioner of police immediately communicated with Paris for further instructions. Mr. Soulé refused to remain in Calais, but returned at once to England, telling the police officer 'that he did not expect any regard on the part of the French Government, and that, besides, he did not care for it.'"<sup>2</sup>

This puts rather a different aspect on the affair, and it must be admitted that the French Government had every justification for its action towards a gentleman of such "fiery temperament."

§ 353. In a case tried in 1889, before the New York courts, the minister accredited by the Government of Venezuela to the French Republic, was served, as he

<sup>1</sup> De Martens-Geffcken, i. 119.

<sup>2</sup> J. W. Foster, *Practice of Diplomacy*, 53.



was passing through New York on the way to his post, with process in connexion with a civil claim against him, and in default of appearance judgment was entered against him. Subsequently an application was made to vacate the judgment, on the ground of diplomatic privilege. This application was granted. On appeal the order was affirmed by the New York Supreme Court. The judge of the court below referred to a previous case, in which the court

“ had expressed the opinion that the privileges of ambassador extended to immunity against all civil suits sought to be instituted against him, whether in the courts of the country to which he was accredited, or in those of a friendly country through which he was passing on his way to the scene of his mission ; such privilege being conceded to the ambassador both as the representative of his Sovereign, and as being necessary to the free exercise of his diplomatic duties. This opinion was in accordance with the views of writers on international law, and also with the fiction of extritoriality, under which an ambassador was assumed to be outside the country to which he was accredited, and to be still resident in his own country. If he had contracted debts and had no real property in the country to which he was sent, then he should be asked to make payment, and in case of refusal application should be made to his Sovereign ; in addition to which he might also be proceeded against in the courts of his own country, in which he was considered to retain his original domicile.”<sup>1</sup>

§ 354. In a note, the first of the writers cited in the last footnote refers to a case in which

“ an action was commenced in the English courts against the same defendant, who was then Minister of Venezuela and resident in Paris ; and an order for the service of the writ outside the jurisdiction having been made, an application was made to the Queen’s Bench Division to set this order aside. In the result, and although the general question was not decided, the Court set aside the order, and held that, as

<sup>1</sup> Pitt Cobbett, *Cases and Opinions on Internat. Law*, 3rd edit., i. 307, on the authority of 56 N.Y. Sup Court., 582 ; J. B. Scott, *Cases on Internat. Law*, 206.



a matter of discretion, it would not allow service of a writ out of England on the Minister of a friendly Power accredited to a foreign State. Manisty, J., indeed expressed the opinion that the immunity of an ambassador, as recognized by the Courts of this country, would be violated by compelling an ambassador accredited to a foreign country to appear and defend himself in Great Britain."<sup>1</sup>

§ 355 (ii) (a). *When the State by which the agent is employed is at war with the third State.*

A Power which, during war, arrests the envoy of a hostile state who is found within its territory, and treats him as a prisoner of war, commits thereby no breach of International Law.<sup>2</sup>

§ 356. France declared war on England, March 15, 1744,<sup>3</sup> *i.e.* against the King of England, Elector of Hanover, and Hanover was consequently enemy territory for France. Marshall Belleisle, who was at Frankfort as French ambassador to the Emperor Charles VII (Elector of Bavaria), was ordered to Berlin as minister. In proceeding thither, he arrived on December 20, together with his brother and his suite, at Elbingerode, a small market town belonging to the Elector of Hanover. The local bailiff, on hearing of his arrival, after having learnt from him who and what he was, and that he was not provided with a Hanoverian passport, declared that he was a prisoner of war, and conducted him to Osterode. On the way, Belleisle wrote to the Hanoverian ministry a letter, recognizing that he and his brother were prisoners of war, and requested them to take the orders of the King of England with respect to them. Orders were sent from London to remove them to England, where they arrived on February 20, and were brought to Windsor.

The French Government, considering them to be prisoners of war, demanded that they should be ran-

<sup>1</sup> *Ibid.*, 308.

<sup>2</sup> Hall, 6th edit., 303.

<sup>3</sup> The English counter-declaration was published on April 9th of the same year.

somed for 32,000 florins, in accordance with a cartel concluded at Frankfort, July 18, 1743, between the belligerents (amongst whom England and France were not then included, as they were taking part in the war only as allies of the Elector of Bavaria and the Queen of Hungary respectively), but the English alleged that the cartel only applied to prisoners of war, and not to state prisoners such as the Marshal and his brother, who were travelling not as general officers, but as ministers from one Court to another. The Emperor also wrote to the Hanoverian Government, demanding the release of the prisoners, alleging that the French declaration of war did not apply to Hanover, that the Marshal had taken the route through Elbingerode by mistake, and that, lastly, he ought to be regarded as an imperial ambassador and a prince of the empire. The Hanoverian ministers, in their reply, had no difficulty in refuting these assertions, and they laid it down as an indisputable principle of the Law of Nations that the prerogatives and privileges of an ambassador, far from being due to him in an enemy country, did not extend beyond the limits of the territory of the sovereign to whom he was accredited.

Belleisle and his brother were treated with the most generous hospitality, and they were finally released in August of the same year, on condition that they gave a written undertaking to surrender themselves as prisoners again, in case the King of France refused to carry out the Treaty of Frankfort (*i.e.* the cartel above-mentioned).<sup>1</sup>

§ 357. Holdernessee, ambassador of Great Britain to Venice, was arrested by hussars under the orders of the Emperor Charles VII, September 16, 1744, as he was passing through Fahrenbach, near Nüremberg. It appears that as late as January 27, 1745, Charles VII had a minister in London, so that there was no excuse for arresting Holdernessee and detaining him as a prisoner

<sup>1</sup> Ch. de Martens, i. 285.

of war. As soon as Seckendorf, the Bavarian Commander-in-Chief, heard of the incident, he ordered General St. Germain to set Holdernessee at liberty and to offer him an apology in person.<sup>1</sup> The Hanoverian administration pointed out that Holdernessee had been arrested in neutral territory, *i.e.* of the Free City of Nuremberg.

§ 358 (ii) (b). *When the State to which the agent is accredited is at war with the third State.*

In 1702, during the war between Sweden and Poland, the Marquis de Bonnac, French envoy extraordinary to Sweden, was arrested when passing through the Duchy of Prussia, which then belonged to Poland, and the Marquis du Héron, French envoy extraordinary to Poland, was kidnapped as he was returning from an entertainment by four companies of Saxon dragoons from Thorn, whither they conducted him. Torci, then minister for Foreign Affairs, wrote to the Primate of Poland, complaining of these violations of diplomatic immunity, and informed him that the King had ordered the arrest of all the Poles in France as hostages for the safety of his envoys. The Primate disavowed his responsibility, and transmitted Torci's letter to the King of Poland. The latter replied that similar measures had been taken in France against the Pope's *nuncios* and Spanish ministers, and that there were precedents in other countries for the treatment of the French envoys. He added that Bonnac was to blame for not having provided himself with a passport, and that Héron had, previously to his arrest, conducted himself in a violent manner, of which complaint had been duly made to the King of France. Nothing seems to have come of these two incidents.<sup>2</sup>

§ 359 (iii). *Situation of the agent, in regard to the relations between the State to which he is accredited, and third states.*

<sup>1</sup> *Ibid.*, 300 n.

<sup>2</sup> Flassan, iv. 239.

The diplomatic agent accredited to a State, as such, and in the absence of a mission or permission of his Government, is in no way authorized to mix himself up in the differences which that State may have with another. If he interferes, the State to which he is accredited, or the other, or both, may complain to his own Government. Either Government entitled to complain may take such measures as it judges to be appropriate, within the limits imposed by diplomatic privileges and immunities.<sup>1</sup>

§ 360. The Marquis de Monti was accredited in 1729 as French envoy extraordinary to Augustus II of Poland, and after the death of that monarch, in 1733, remained at Warsaw, with instructions to favour the re-election of Stanislas Leczinski, in which he was successful. But his credentials had expired with the death of Augustus. The day after the re-election of Stanislas, another Polish party, supported by Russia, raised Augustus III of Saxony to the throne. Russian and Saxon troops, having forced Stanislas to quit Warsaw, besieged him in Dantzic (then a Polish possession), whither Monti, alone of all the foreign diplomatists, had followed him. When the city was compelled to surrender, on June 28, 1734, Monti gave himself up to the Russian commander, Marshal Munnich, who confined him at a château near Marienbourg, and afterwards at Thorn. Monti protested, on the ground of diplomatic privilege, and the French Government upheld his protest. Great Britain and Holland made common cause with France, and instructed their ministers to intercede on his behalf with the Russian Government. The Empress of Russia consequently caused a long argument to be delivered to the ministers of Great Britain and Holland, pointing out, first, that "only those ministers who do not transgress the limits of their functions can claim inviolability, and that only at the

<sup>1</sup> van Hoey's case, *Rivier*, ii. 511, and *Phillimore*, ii. 211.

hands of the Court to which they are accredited, and where they have been received and recognized as public ministers." Moreover, Monti had himself taken part in hostilities against the Russian troops. Secondly, that Monti's powers expired with the death of Augustus II, and consequently it was doubtful whether he was entitled to be regarded as an ambassador after that event, and, lastly, that he had voluntarily surrendered to the Russian commander-in-chief, "ready," as he said, "to undergo all the misfortunes that might await him."<sup>1</sup>

The rule is that the diplomatist whose letters of credence have expired in consequence either of the death of his own sovereign or of the sovereign to whom he is accredited, is, nevertheless, accorded all the usual immunities and privileges during the interval which elapses before he receives fresh credentials.

Flassan's opinion was that the Russians were within their rights in treating Monti as a prisoner of war. Though war had not been declared between Russia and France, acts of hostility had taken place, and 1500 French troops had been despatched to the relief of Dantzic, where Stanislas was being besieged after his flight from Warsaw. Consequently he was the diplomatic representative of an enemy, residing at the Court of an enemy. He had not remained at the capital, which was his proper place of residence, and had even fought at the side of Stanislas against the Russians. After the signature of the preliminaries of peace on October 3, 1735, between Russia, France and the Emperor, by which Augustus III was recognized as King of Poland and Lithuania, Monti recovered his liberty.

§ 361. Van Hoey's case. In June 1746, after the battle of Culloden, Van Hoey, the ambassador of the United Provinces at Paris, who enjoyed the confidence

<sup>1</sup> Ch. de Martens, i. 210; Flassan, v. 72.



of the French ministry, and is said to have served on several occasions as intermediary between the courts of St. James and Versailles (Great Britain and France being then at war), was imprudent enough to yield to the request of d'Argenson that he would write to Newcastle, Secretary of State for the Southern department, to ask that the Pretender's life should be spared, in case he were taken. This interference, very clumsily attempted, and carried out without any instructions from the Hague, excited the resentment of the English Government. They complained to the States-General, and demanded public satisfaction proportioned to the scandal caused by this proceeding to every friend of the honour, liberty and religion of the two Powers. The States-General administered a severe rebuke to Van Hoey, whom they ordered to write a polite and proper letter to the Duke of Newcastle, to acknowledge his own imprudence and the fault of which he had been guilty, to ask pardon and to promise to conduct himself more prudently for the future.<sup>1</sup>

(LL. HH. PP. lui ordonnent d'écrire à M. le duc de Newcastle une lettre polie et décente, d'y avouer son imprudence et la faute qu'il a commise, et d'en demander pardon, promettant de se conduire plus prudemment à l'avenir. Resolution of the States-General.)

§ 362 (iv). *Situation of a diplomatic agent accredited to a belligerent State, and found there by the other belligerent in territory under the military control of the latter.*

The envoy of a neutral Power found within the territory of a conquered state, is not subject to arrest or expulsion by the occupying Power, but must be regarded as inviolable, (a) as long as his actions are harmless, *i.e.* as long as he conveys to the enemy no information of a character to prejudice the military interests of the conqueror. (b) If he allows himself to be shut up in a besieged place, he cannot claim as of right to correspond freely with his own Government.

<sup>1</sup> Rivier, i. 512 ; Ch. de Martens, i. 312-25.



§ 363 (a). "Towards the end of August 1756, Frederick the Great, having invaded Saxony, the Comte de Broglie, French ambassador, remained at Dresden in attendance on the Queen of Poland after the King's departure. Frederick, on the pretext that Broglie was in the habit of transmitting information respecting the positions and movements of the Prussian army to Marshal Brown, the Austrian commander-in-chief, sent to him his aide-de-camp, Baron von Cocceji, to request him not to abuse the good nature of the Prussian king, and to give him notice that he would be regarded simply as a private individual. Broglie replied that he was where his duty called him, and that he counted on being able to remain at Dresden, under the protection of the Law of Nations, until he should receive fresh orders from his Court.

"Cocceji returned half an hour later and communicated to him an order to leave Dresden without delay. Broglie answered that, though he did not wish to prolong his stay uselessly, private affairs might perhaps require him to remain a few days longer, and that when he left M. Hennin, the secretary of Embassy, would remain, to look after the correspondence which the Queen kept up with her daughter the dauphiness.

"Broglie then left the Queen's palace, and on returning to his residence found there Cocceji with two other officers, and Prussian soldiers filling up the lower part of the house. Cocceji repeated the order to depart at once with the whole embassy. At first Broglie protested loudly against the posting of troops in a house lent by the Queen and occupied by foreign diplomats (the Danish minister was also lodged there). He concluded by saying that he expected every moment to receive orders from the King his master, and that he would not delay his departure a moment after he received them, but that it was absolutely necessary for him to leave his secretary at Dresden.

"Cocceji was sent a fourth time to tell him that the King of Prussia's intentions having been so clearly explained to him, it was needless to add anything, except that his Majesty persisted in his requirement. As for the soldiers stationed in His Excellency's house, it had been found unavoidable, owing to want of quarters for the garrison, not to except the houses of the foreign ministers from billeting troops on them.

"Things remained thus till November 20, when the Count de Broglie quitted Dresden, and proceeded by way of Prague to Warsaw, leaving M. Hennin as *chargé d'affaires* with the Queen of Poland, a function which he discharged during three months, at the end of which time the King of Prussia required him also to leave Dresden.

" Apart from the question of the proceedings taken on this occasion towards persons clothed with a diplomatic character, which ought always to be becoming, the question seems to present itself, whether a political agent accredited to a sovereign whose country has been conquered, retains his powers as agent to that sovereign, or whether they are annulled by the fact of conquest. For such was M. de Broglie's position. Strictly speaking, the King of Prussia could decline to regard him in any other light than that of a private individual, to whom he must accord treatment with consideration, unless he ceased to deserve it by conveying information to the enemy ; in which case his own safety entitled him to remove M. de Broglie." <sup>1</sup>

§ 364 (b). When the dominions of the State to which a diplomatist is accredited are invaded by another Power, if he continues to reside in the territory occupied or in a place besieged by the forces of the hostile Power, he cannot expect to enjoy all his immunities and privileges to their full extent. These will practically be limited by the military necessities of the invader, who is alone the judge of such necessities.

§ 365. This question was the subject of controversy during the siege of Paris in the war of 1870-71 between the diplomatic agents who had remained in the city and Count Bismarck. Amongst these were the *Nuncio*, Mr. Washbourne, United States minister, the Swiss, Swedish, Danish, Belgian and Netherlands ministers. They addressed a letter to Count Bismarck on October 6, 1870, with respect to a previous request communicated through M. Jules Favre, for permission to send out a diplomatic courier through the German lines once a week, and to the reply that letters would be allowed to pass if unclosed, provided that they contained nothing objectionable from a military point of view.

(Quoique nous soyons disposés à autoriser volontiers la sortie de lettres ouvertes émanant d'Agents Diplomatiques en tant que leur contenu n'offre pas d'inconvénient sous le

<sup>1</sup> Flassan, vi. 73.

rapport militaire, il m'est impossible néanmoins de reconnaître comme fondée et d'admettre les conséquences de la manière de voir de ceux qui voudraient considérer l'intérieur des fortifications de Paris comme un centre approprié à des relations diplomatiques)

And said—

“ Nous nous serions fait un devoir, quant au contenu de nos dépêches, de nous conformer scrupuleusement aux obligations imposées pendant un siège aux Agents Diplomatiques par les règles et usages du droit international.

“ Par contre, notre position d'Agents Diplomatiques, et nos obligations envers nos Gouvernements, ne nous permettent pas d'accepter l'autre condition, de ne leur adresser que des dépêches ouvertes.

“ Si cette dernière condition devait être maintenue, il deviendrait impossible, à leur vif regret, aux Représentants Diplomatiques des Etats neutres d'entretenir des rapports officiels avec leurs Gouvernements respectifs.”

Count Bismarck's reply, addressed to the *nuncio*, Monseigneur Chigi, ran thus—

*Versailles,*  
le 10 octobre, 1870.

MONSEIGNEUR,

J'ai eu l'honneur de recevoir la lettre en date du 6 octobre dernier par laquelle les membres du Corps Diplomatique résidant encore à Paris ont bien voulu m'informer qu'il leur deviendrait impossible d'entretenir des rapports officiels avec leurs Gouvernements respectifs si la condition de ne pouvoir leur adresser que des dépêches ouvertes devait être maintenue.

Lorsque la continuation du Siége de Paris fut rendue inévitable par le refus d'un armistice par le Gouvernement Français, le Gouvernement du Roi prévint de son propre mouvement, par une note circulaire du Secrétaire d'État, M. de Thile, en date du 26 septembre dernier, dont j'ai l'honneur de vous transmettre une copie, les Agents des Puissances neutres accrédités à Berlin que la liberté des communications avec Paris n'existait plus qu'autant que les événements militaires le permettaient. Le même jour je reçus à Ferrières une communication de M. le Ministre des Affaires Étrangères du Gouvernement de la Défense Nationale qui m'informait du

désir exprimé par les membres du Corps Diplomatique d'être autorisés à expédier des dépêches à leurs Gouvernements par des courriers partant chaque semaine, et je n'hésitai pas, en me conformant aux règles établies par le droit international, à y faire une réponse dictée par les nécessités de la situation militaire, dont je me permets également de transmettre une copie à votre Excellence.

Les Représentants du pouvoir actuel ont cru convenable d'établir le siège de leur Gouvernement au milieu des fortifications de Paris et de choisir cette ville et ses environs comme théâtre de la guerre. Si les membres du Corps Diplomatique accrédités auprès d'un Gouvernement antérieur se sont décidés à partager avec le Gouvernement de la Défense Nationale les inconvénients inséparables du séjour dans une forteresse assiégée, ce n'est pas le Gouvernement du Roi qui en porte la responsabilité.

Quelle que soit notre confiance que MM. les Signataires de la lettre du 6 octobre sauraient personnellement se conformer, dans les communications adressées à leurs Gouvernements, aux obligations que leur présence dans une forteresse assiégée selon les règles du droit de guerre peut imposer à des Agents Diplomatiques, il faut cependant tenir compte de la possibilité que l'importance de certains faits pourrait leur échapper au point de vue militaire. Il est évident d'ailleurs qu'ils se trouveraient hors d'état de nous fournir la même garantie pour les messagers qu'ils croiraient devoir employer, et que nous serions obligés de laisser passer et repasser à travers nos lignes.

Il a été à créé à Paris un état de choses auquel l'histoire moderne sous le point de vue du droit international, n'offre aucune analogie précise. Un Gouvernement en guerre avec une Puissance qui ne l'a pas encore reconnu, s'est enfermé dans une forteresse assiégée, et s'y trouve entouré d'une partie des diplomates qui étaient accrédités auprès du Gouvernement à la place duquel s'est mis le Gouvernement de la Défense Nationale. En face d'une situation aussi irrégulière, il sera difficile d'établir, sur la base du droit des gens, des règles exemptes de controverse sous tous les points de vue.

Je crois pouvoir espérer que votre Excellence ne méconnaîtra pas la justesse de ces observations, et voudra bien apprécier les considérations qui m'empêchent, à mon vif regret, de donner suite au désir exprimé dans la lettre du 6 octobre dernier.

Si cependant les signataires ne croyaient pas pouvoir en admettre la justesse, les Gouvernements qu'ils ont représentés

à Paris et auxquels je m'empresserai de communiquer la correspondance échangée avec eux, aviseront de leur côté, et se mettront en communication avec le Gouvernement du Roi pour examiner les questions du droit des gens se rattachent à la position [a-] normale que les événements et les mesures du Gouvernement de la Défense Nationale ont créée à Paris.

Veillez, &c.,

(signed) VON BISMARCK.

(Inclosure in the above ; circular addressed by M. de Thile to Foreign Representatives at Berlin.)

Berlin,  
le 20 septembre, 1870.

(Traduction.)

Les représentants du pouvoir en France ayant repoussé l'armistice, un Gouvernement reconnu n'existant plus à Paris, et le Gouvernement fonctionnant de fait ayant, à ce qu'on dit, transféré sa résidence à Tours, le Soussigné a l'honneur de prévenir M. . . . que les communications avec Paris n'existent plus qu'autant que les événements militaires le permettront.

Le Soussigné, etc.,

(signed) THILE.<sup>1</sup>

§ 366. It appears, however, that Mr. Washburne, who had charge of the protection of subjects of the North German Confederation, Saxony, Hesse-Darmstadt and Saxe-Coburg-Gotha and their interests in Paris after the declaration of war, was on that ground allowed the privilege of despatching and receiving closed bags once a week through Versailles, up to the end of the siege. These bags were transmitted through the United States legation in London. Several complaints were made to him by Prince Bismarck respecting (1) the receipt in these bags of English newspapers, which persons not belonging to the legation were allowed to peruse, and (2) of the transmission by the same channel of private letters to persons of French and neutral nationality. These complaints were satisfactorily dealt with by Mr. Washburne in his reply of January 19. Count Bismarck then wrote to him on January 28 as follows—

<sup>1</sup> *British and Foreign State Papers*, lxi. 896-901.



Sir,—I had the honour of receiving your answer, dated the 19th instant, to my two letters of the 15th, relating to your correspondence with the United States Legation in London. I should very much regret if you should have construed anything in these two letters so as to convey the indication of any complaint against you. Nothing, indeed, could be further from my thought, and I take pleasure in renewing the expression how deeply sensible I am of all the trouble you have in carrying on your correspondence with the authorities in Paris, and in taking care of our countrymen there. But the balloon letters<sup>1</sup> having been brought officially under my notice by the military authorities, I thought it my duty to inform you of the reference made in those letters to your legation, and to that in London. The delay occurred now and then in the transmission of your despatch-bags is not occasioned by any doubt as to the right of your Government to correspond with you, but by obstacles it was out of my power to remove. I hope that for the future there will not be any more delay of that kind.

Mr. Washburne's letter of January 19 was mainly occupied by an explanation of the supposition that the despatch-bag had contained private letters to French and other persons which ought, perhaps, not to have been delivered to their destinations, but in fact they had been examined and found to contain "no allusion to military events." Mr. Washburne in that letter did not speak of his "rights" as a diplomatist. He dwelt on the services he had during the past six months rendered to Germans in Paris, and protested against any imputations on his good faith in connexion with the contents of the bags received or despatched by him. He would

"decline receiving or transmitting any dispatch-bag or any communications through your military lines upon terms and conditions which might be construed as implying a distrust of my good faith and of the loyal manner in which I have

<sup>1</sup> Letters found in a captured balloon which showed that "the facilities we have accorded to the correspondence of the American Legation in London are known to private persons, some of them French and made use of by them in order to carry on a clandestine correspondence with other persons, some of them French" (*For. Rel. of U.S.* 1871, p. 285, letter of January 15th, to Mr. Washburne).



discharged my duty toward belligerents and to my own Government, to which I am alone responsible for my official action."

More than a month before this, Mr. Fish, the Secretary of State, had addressed a Note to Baron Gerolt, the German envoy at Washington. This Note has been printed in *Foreign Relations of the United States for 1871*, 401, and according to Count Bismarck's letter to Mr. Bancroft, U.S. minister at Berlin, of January 15, it claimed for the representatives of all neutral powers in Paris the right of free intercourse with their governments on the ground that such intercourse is in itself one of the privileges of envoys.

Count Bismarck contested this conclusion—

"The right of unhindered written intercourse between a government and its diplomatic representative, especially so far as concerns the government to which he is accredited, is in itself undisputed. But this right may come in conflict with rights which of themselves are also beyond dispute, as, for instance, in the case where a State, to guard against contagious disease, subjects travellers and papers to a quarantine. So, too, in war. The universal and imperative right of self-protection, of which war is itself the expression, may come in conflict with the diplomatic privileges which, just because privileges, are, in doubtful case, subject not to an enlarging, but to a contracting interpretation. . . . If the writers on public law concede to the diplomatic representatives of neutral states, rights as against a belligerent power, they do so only while, at the same time, coupling therewith the right to regulate the correspondence of such persons with a besieged town, according to military exigencies." Vattel says—

"' Elle (la guerre) permet d'ôter à l'ennemi toutes ses ressources, d'empêcher qu'il ne puisse envoyer ses ministres pour solliciter des secours. Il est même des occasions où l'on peut refuser le passage aux ministres des nations neutres qui voudraient aller chez l'ennemi. On n'est point obligé de souffrir qu'ils lui portent peut-être des avis salutaires, qu'ils aillent concerter avec lui les moyens de l'assister, etc. Cela ne souffre nul doute, par exemple, dans le cas d'une ville assiégée. *Aucun droit ne peut autoriser le ministre d'une puissance neutre ni qui que ce soit à y entrer malgré l'assiégeant, mais pour ne point offenser les souverains, il faut leur donner*

de bonnes raisons du refus que l'on fait de laisser passer leurs ministres, et ils doivent s'en contenter s'ils prétendent demeurer neutres.' ”

He continued—

“ What is true of ministers will be all the more so of messengers and despatches. . . . The military necessity of cutting off a besieged town from outside intelligence appears a sufficient ground for subjecting to control, in a military point of view, the correspondence of diplomatic persons remaining in the town in its passage through territory occupied by the besiegers, and temporarily subject to their war sovereignty. It is not perceived that these persons are thereby treated as enemies, nor that they are thereby prevented from continuing neutral, or that wars are thereby indefinitely prolonged. On the contrary, the end of a war is all the sooner to be expected the more strictly the isolation of the hostile capital is carried out.” <sup>1</sup>

The doctrine here so clearly laid down must be regarded as incapable of refutation, and Mr. Fish must have felt it to be unanswerable. Consequently, in his instruction to Mr. Bancroft of February 24, 1871, he remarks that the question is no longer of practical application to any probable occurrences. . . . He then ingeniously makes use of the word “ right ” in Count Bismarck’s letter to Mr. Washburne in the following manner—

“ The President desires to make all proper allowance for the military exigencies which are represented to have led to the withdrawing and detaining of the official correspondence of the minister, and is gratified to receive the recognition in Count Bismarck’s letter of January 28 to Mr. Washburne of the right of correspondence contended for in my note to Baron Gerolt of 21st November last, and his assurance that the delay to which it was subjected proceeded from causes which he could not remove.

“ Recent events, it is confidently hoped, have removed the probability of any recurrence of the interruption of free correspondence. And Count Bismarck’s assurance to Mr. Wash-

<sup>1</sup> This and other documents in the correspondence given are translations from the German.

burne that 'the delay occurring now and then in the transmission of your dispatch-bag is not occasioned by any doubt as to the right of your Government to correspond with you, but by obstacles it was out of my power to remove' confirms this Government in its confidence of an entire agreement between it and North Germany on the question of the right and the inviolability of correspondence between a government and its representative, and of the absence of any intentional interference with that right in the case of its minister to Paris. I send, herewith, a copy of a dispatch of this date to Mr. Washburne.

"As Count Bismarck's recognition of the right for which I contended in my note to Baron Gerolt is subsequent to his letter <sup>1</sup> to you of 15th January, and admits what I felt it my duty to claim, there does not appear to be any necessity for continuing the discussion, unless the subject be again referred to by the German minister, in which case you are authorized to read to him this despatch."

Doubtless, Mr. Bancroft, had the matter been mentioned again to him, would have used the discretion apparently left to him by the word "authorized," and would have abstained from acting on it. If Mr. Fish desired to attempt a reply to Count Bismarck's arguments, the proper course would have been to continue as he began, and to address a further Note to Baron Gerolt.<sup>2</sup>

§ 367. In fact, the question was not an entirely new one for diplomatists. In 1823, during the French invasion of Spain, the Cortes had retired to Cadiz, carrying the king with them, and, the French forces having laid siege to that city, Sir Wm. A'Court, the British minister, judged it wiser not to follow the King thither. During a debate in the House of Commons on February 17, 1824,

<sup>1</sup> It was much more than a "letter" being a Note in the stiffest official style, framed in the third person.

<sup>2</sup> The account of this correspondence given at p. 304 of Hall's *Treatise*, etc., 6th edit., differs apparently from that contained in the volume of *Papers Relating to the Foreign Relations of the United States*, Dec. 4th, 1871. It seems to be based on D'Angeberg, *Recueil des Traités*, etc., *concernant la guerre Franco-Allemande*, Nos. 756 and 783. On the whole, Mr. Hall's view coincides with that of Count Bismarck:

the conduct of Sir Wm. A'Court having been censured by an opposition speaker, Canning replied that instructions had been sent which forbade him to put himself in a blockaded place.<sup>1</sup> These instructions are contained in a despatch from Canning of September 15, 1823, in which he said—

“ You have judged wisely in declining their *i.e.* [of the Spanish Government] Solicitation to repair, under the present Circumstances, to Cadiz.

“ It is obvious that one object at least (if not the single object) of that Solicitation, is to produce a state of things, fertile in sources of Misunderstanding with the blockading Belligerent ; and of questions which, as it would be difficult to solve, it would be most inconvenient unnecessarily to stir :—questions, of which the usually admitted authorities in matters of international law, have not even contemplated the occurrence ; and for the decision of which history affords no practical example. Who has laid down and, in the absence of authority and precedent, who shall lay down what are the rights and privileges of the Minister of a Neutral Power in a town besieged and blockaded by sea and land ? Has he a right of unlimited communication with his Court ? Is he to direct the Vessel which he may employ, to submit to search or to resist it, in the execution of this object ?

“ These and a hundred other questions of the like difficulty must arise in a situation so new and anomalous : and questions between Nations which are not referable to preconcerted agreements, or to settled principles and acknowledged law, what power is to decide but the Sword ?

“ If we had been disposed to go to war with France, and in behalf of Spain, we would have done so openly, and either on the merits of the case, or in vindication of some intelligible interest. But after professing and maintaining a perfect and scrupulous neutrality throughout the contest, to be betrayed at this stage of it, into hostilities with France, through an uncalled for and unprofitable discussion upon abstract points of international jurisprudence, would be a weakness unworthy of any Government and such as must make us the laughing-stock of Europe.

“ Your presence at Gibraltar places you quite as much within the reach of the Spanish Government for all purposes

<sup>1</sup> Parliamentary Debates, new series, x. 204.

of active friendship and utility (as indeed the late transaction has shown) as if you were shut up within the walls of Cadiz and exposed (gratuitously as must be admitted) to the dangers and sufferings of a siege.”<sup>1</sup>

Could the question be more clearly stated, if “ Paris ” were substituted for Cadiz ?

<sup>1</sup> P.R.O., F.O. 72/268, quoted in Stapleton's *Political Life of the Rt. Hon. George Canning*, i. 465.

## CHAPTER XXIII

### THE DIPLOMATIC BODY

§ 368. Its constitution—§ 369. The *doyen* and his functions—§ 370. The *doyenne*—§ 371. Precedence among heads of missions—§ 373. Precedence of Diplomatic Body in different countries—§ 374. Precedence not altered by reason of new credentials on death of sovereign—§ 375. Councillor of Embassy with rank of Minister plenipotentiary—§ 376. Chargé d'Affaires *en titre* and *ad interim* distinguished—§ 377. In doubtful cases, the Court Regulations are decisive—§ 378. Obsolete ancient rules regarding the first visit—§ 379. Case of Cardinal Savelli in 1647—§ 380. Negotiators without official character—§ 381. Boundary and other commissioners—§ 382. Wives of diplomatists, their privileges, etc.—§ 383. "Giving the hand" (*la main, die Oberhand*)—§ 384. Intercourse of diplomatic agents of belligerents at a neutral court—§ 385. Instructions to Hautefort in 1750—§ 386. Precedence at personal meetings—§ 387. In signing treaties, etc.—§ 388. In a diplomatic house—§ 389. Title of "Excellency"—§ 390. English practice—§ 391. Callières on this subject—§ 392. Envoys and ministers not strictly speaking entitled—§ 393. Spanish practice—§ 394. Peruvian rules—§ 395. Dispute in 1737 between France and Portugal—§ 396. Decorations and presents—§ 397. Queen Elizabeth's objections—§ 398. English rules in Queen Victoria's Reign—§ 399. Relaxed in 1911, and rules of 1914—§ 400. French, Belgian and Spanish rules—§ 401. Agreement between Denmark and Sweden and Norway—§ 402. United States rule—§ 403. English rule of 1834 as to presents, and earlier practice—§ 404. Foreign instances—§ 405. Presents distributed at the Congress of Vienna—§ 406. At the Congress of Teschen—§ 407. Place of honour at Court festivities—§ 408. Absence from Court festivities—§ 409. Visist to colleagues on *fête-days*.

§ 368. The Diplomatic Body comprises all the heads of missions, their secretaries and *attachés*, both paid and honorary, and including military, naval and commercial *attachés*, chaplains, and all other members who are on the diplomatic establishment of their respective countries. In Oriental countries many embassies and legations have *corps* of student-interpreters (*interprètes élèves*), who are destined to be attached to the consular



service when they have completed their studies. Whether these are to be included in the Diplomatic Body depends on the decision of the Head of the Mission concerned. At most capitals a list of the Diplomatic Body, compiled from lists furnished by each Mission, is published from time to time. This includes the wives and daughters (of age to be presented at Court) of the members of the Missions.

§ 369. The *doyen* is the senior diplomatic representative of the highest category. His functions are of a limited character in most countries, and are chiefly of a ceremonial description. He is the mouthpiece of his colleagues on public occasions, as, for instance, at Court receptions, where it is the usage for the Diplomatic Body to offer their conjoint congratulations to the Head of the State, *e.g.* on his *fête*-day or on New Year's Day. He is the defender of the privileges and immunities of the Diplomatic Body from injuries or encroachments on the part of the Government to which they are accredited. He is sometimes used as a channel for communication on ceremonial matters to the other heads of missions. Whatever records belong to the Body as a whole are in his keeping. At Peking, and perhaps at some other Oriental capitals, he has more important duties to perform, as the channel through which joint representations regarding the treaty rights of foreigners in general are forwarded to the Government. But he is in no case entitled to write or speak on behalf of his colleagues without having previously consulted them and obtained their approval of the step which it is proposed to take, and of the wording of any written or spoken representations on their behalf. No Head of a Mission will take part with his colleagues in a joint representation to the Government of the country, without special authorization from home, or accept a summons from the *doyen* to attend a meeting for the discussion of international matters unless he has received

instructions to take joint action. At Washington such joint *démarches* of the Diplomatic Body are generally declined by the Department of State; an apparent disregard of this rule occurred just before the outbreak of the war with Spain in 1898, when the European ambassadors were received by the President to make a joint representation in favour of peace.<sup>1</sup>

§ 370. The wife of the senior diplomatic representative of the highest category is called the *doyenne*. Her functions are limited to presenting at Court ladies of the Diplomatic Body who have no one else to perform this office for them, *i.e.* if the Head of the Mission to which their husbands belong is unmarried.

§ 371. *Precedence among Heads of Missions.* In each category of diplomatic agents seniority depends on the date of official notification of arrival at the capital. This is the rule laid down in the *Règlement de Vienne* (see above, § 271).<sup>2</sup> Some authors state that it depends on the date of the presentation of credentials.<sup>3</sup>

§ 373. In monarchical countries the Diplomatic Body come after the members of the reigning family. In republics their precedence is not uniformly settled. In France they come after the Presidents of the Senate and Chamber of deputies, at Washington after the Vice-President. In South American republics we believe they take rank after the members of the Cabinet and the presidents of the legislative chambers.

§ 374. Owing to the necessity of obtaining new credentials on the occasion of the death of either the accrediting Sovereign or of the Sovereign to whom the Head of a Mission is accredited, differences of opinion

<sup>1</sup> J. W. Foster, *Practice of Diplomacy*, 124.

<sup>2</sup> Pradier Fodéré, i. 288.

<sup>3</sup> J. W. Foster, *Practice of Diplomacy*, etc., 70; De Martens-Geffcken, i. 53; García de la Vega, 209, 422.

have sometimes arisen as to the necessity of a change of precedence among diplomatists, consequent on the difference of date on which the new credentials may come into their hands, which, of course, will affect the order in which they are enabled to give official notification to the Minister for Foreign Affairs. In March 1818, a controversy occurred at Copenhagen under the following circumstances: The envoy of a certain Power was the *doyen* of the Diplomatic Body at the Danish Court. In consequence of changes at his own Court, he received new credentials. Some of his colleagues maintained that he had thereby lost his seniority, and must take rank after the others. The majority, however, took the opposite view.<sup>1</sup> In 1830, it was agreed among the Heads of Missions at Paris that, notwithstanding the date of delivery of their new credentials, they should continue to rank among themselves as before. The same arrangement was maintained in 1848, on the establishment of the Second Republic, and in 1852, on the assumption of the title of Emperor by Prince Louis Napoleon. Similarly in Belgium, on the accession of King Leopold II, in consequence of the death of Leopold I on December 10, 1865; and the Belgian diplomatic representatives in foreign countries also preserved their former relative seniority.<sup>2</sup> At the accession of King Alfonso of Spain, in 1875, the British minister had been *doyen*, but the ministers of Portugal and Russia, having presented their new credentials before he did, claimed precedence. After much discussion it was decided that the previous order of precedence should prevail.<sup>3</sup>

It seems obvious that whatever arrangements the heads of missions may make among themselves, these cannot affect the rules of precedence *at Court* which are adopted by the sovereign to whom they are accredited.

<sup>1</sup> Schmelzing, ii. 128.

<sup>2</sup> Pradier-Fodéré, i. 290; García de la Vega, 210.

<sup>3</sup> U.S. *For. Rel.*, cited by J. W. Foster, *Pract. of Dipl.*, etc., 71.

And while in some places it is held that the date of presentation of credentials regulates the rank in each category,<sup>1</sup> this cannot well happen at courts which were parties to the *Règlement de Vienne*.

§ 375. It is usual to confer the rank of Minister Plenipotentiary on the councillor to the British embassy at Paris, and up to 1906, whenever the Ambassador went on leave, the councillor at once presented his credentials to the Minister for Foreign Affairs. But in that year the councillor received credentials to the French Republic and the same course was pursued in 1911. In these cases the councillor who has the title of minister ranks after the Envoys Extraordinary and Ministers Plenipotentiary. There is no difference in status between a Minister Plenipotentiary *en titre* and one who has also the title of Envoy Extraordinary.<sup>2</sup>

§ 376. It is sometimes said that *Chargés d'affaires* accredited to the Minister for Foreign Affairs rank among themselves according to the date of the delivery of their letter (which is contrary to the *Règlement de Vienne*) and that *consequently* a *Chargé d'affaires ad interim* ranks after all those belonging to the permanent category. The existence of the latter cannot be said to have been taken into account at Vienna in 1815.

“The distinction is now, however, always and everywhere recognized. Many years ago, M. Casimir Périer was French *Chargé d'affaires intérimaire* at Brussels, while Count Dietrichstein was a *Chargé d'affaires en titre* for Austria. The former claimed precedence on the ground of seniority. The other maintained that he was entitled in virtue of superior rank. Eventually they accommodated their difference by good-humouredly agreeing to walk past arm-in-arm on official occasions.”<sup>3</sup>

§ 377. As has been said already, when there is any doubt as to the rules of precedence, the regulation of

<sup>1</sup> As, *e.g.*, at Lima, according to the *réglement* of Nov. 19th, 1892.

<sup>2</sup> García de la Vega, 208 *n.*

<sup>3</sup> Pradier-Fodéré, 291.

the particular court is decisive on the point. " This was particularly the case in former times at Constantinople. France, Holland, and England used to have formally accredited envoys. The other representatives were the Austrian *internuntius*, the Ministers of Spain, Russia, Prussia and Naples, and the Swedish and Danish *Chargés d'affaires*, of whom the latter also cared for the interests of the King of Saxony. The French envoy had precedence over all his diplomatic colleagues, no matter what their seniority, and for this reason Great Britain sometimes maintained only a *Chargé d'affaires*, while the interests of France were entrusted to a regular envoy. The Austrian *internuntius* occupied a position intermediate between those of an envoy and a *Chargé d'affaires*,<sup>1</sup> but was accorded the title of Excellency. The *Chargés d'affaires* of Spain and Russia had precedence over all others of the same class."<sup>2</sup>

§ 378. This is, however, now, all of it ancient history. Still more antiquated is what is to be found in Callières.

" Quand un Ministre <sup>3</sup> est arrivé dans une Cour, & qu'il en a donné part au Prince, il doit en informer tous les Ministres Etrangers qui sont en la même Cour, par un Gentilhomme,<sup>4</sup> ou par un Secrétaire, ils luy rendent ensuite la première visite, qui est dûë au dernier venu, s'il manque à faire avertir de son arrivée quelqu'un des Ministres Etrangers qui sont dans la Cour où il arrive, ce Ministre ne luy doit point rendre de visite jusqu'à ce qu'il ait satisfait à cette civilité.

Lorsqu'il y a des Ambassadeurs de plusieurs Roys, celui qui arrive doit rendre la première visite à l'Ambassadeur de France, qui a par tout le premier rang, & qui ne la doit pas recevoir autrement.<sup>5</sup>

<sup>1</sup> This statement does not tally exactly with what is given in Chap. VIII on the authority of other writers.

<sup>2</sup> Schmelzing, 129.

<sup>3</sup> This term is used to include all categories of diplomatic agents from ambassador downwards.

<sup>4</sup> This seems to have been what we now call an honorary *attaché*, or perhaps a *page*.

<sup>5</sup> Callières, 181. This author's orthography, accents and punctuation have been carefully reproduced in this and other extracts.



§ 379. The claim of French Ambassadors to be visited before those of other Powers was sometimes pushed to an extreme, as appears from the following case.

“ Le Cardinal Savelli Romain, ayant été fait Cardinal en 1647, le Comte d'Ognate, Ambassadeur d'Espagne luy rendit la premiere visite avant celle qu'il reçût du Marquis de Fontenay Mareuil Ambassadeur de France; ce Cardinal rendit à l'Ambassadeur d'Espagne sa visite, & alla ensuite chez l'Ambassadeur de France, qui le laissa entrer dans sa cour, & comme il sortoit du carosse, on lui vint dire de la part de l'Ambassadeur, qu'il ne vouloit pas le recevoir, parce qu'il avoit manqué à ce qu'il devoit à la Couronne de France, le Cardinal se plaignit de l'affront que l'Ambassadeur luy faisoit, à quoy on luy répondit qu'il ne devoit s'en prendre qu'à luy-même, qu'il ne pouvoit pas ignorer ce qui étoit dû à l'Ambassadeur du premier Roy de la Chrétienté, & qu'il n'avoit que feuilleter les Registres de la Cour de Rome, s'il en étoit mal-instruit; Ce Cardinal fit faire ensuite de grandes excuses à l'Ambassadeur de France, & dit qu'il n'avoit manqué que par le mauvais conseil de quelques Prelats qui luy avoient dit qu'il falloit rendre les visites dans l'ordre qu'il les avoit reçues.”<sup>1</sup>

§ 380. *Negotiators without Official Character.*

Such as have from time to time been maintained by Great Britain at the Vatican. The Court to which they are sent, and to whom their errand and character is known, must treat them as inviolable, but they cannot claim any diplomatic ceremonial.<sup>2</sup>

§ 381. *Commissioners* for boundary questions, or for the exchange and cession of territories, have no claim to the ordinary diplomatic privileges and honours, but the inviolability of their persons and official papers ought to be conceded to them.<sup>3</sup>

§ 382. *Wives* of diplomatists enjoy the same privileges, honours, precedence and title as their husbands. The wife of an Envoy consequently is entitled to—

<sup>1</sup> *Ibid.*, 184.

<sup>2</sup> Schmelzing, 136.

<sup>3</sup> Oppenheim, 2nd edit., i. 511.



1. A higher degree of inviolability than what is assured to her in virtue of her birth and sex.

2. The same personal exemptions as belong to her husband.

3. She accords to ladies of position at the Court equality in matters of ceremony, only if her own husband accords equal rank to the husbands of those ladies.

4. She claims precedence and preference in respect of presentation, reception at Court, visits and return visits, over other ladies, only if her husband enjoys precedence over the husbands of those other ladies.<sup>1</sup>

The rules as to presentations at Court and to members of reigning families, as well as to official visits which they must pay, and visits to which they are entitled, are laid down with much precision at every capital, and can be learnt by inquiry in the proper official quarter.

§ 383. In former times the question whether an ambassador, or other person of high rank, such as a cardinal, should give the seat of honour to a person of lower rank paying him an official visit was held to be one of vital importance. Thus, in the instructions given to the Hon. Henry Legge, when he was being despatched to Berlin, in 1748, as envoy to the great Frederick, occurs the following passage—

“Whereas Our Royal Predecessor King Charles the Second did, by his Order in Council, bearing date the 26th Day of August, 1668, direct, that his Ambassadors should not, for the future, give the Hand [*i.e.* the seat of honour] in their own Houses to Envoys, in pursuance of what is practised by the Ambassadors of other Princes, and did therefore think it reasonable, that His Envoys should not pretend to be treated differently from the Treatment He had directed his Ambassadors to give to the Envoys of other Princes ; We do accordingly, in pursuance of the said Order in Council, hereby direct you, not to insist to have the Hand from Any Ambassador, in his own House, who may happen to be in the Court where you reside.”<sup>2</sup>

<sup>1</sup> Schmelzing, 159.

<sup>2</sup> P.R.O., King's Letters, Prussia, 1737-1760, 2.

Callières, too, on this subject, says—

“ Les Ambassadeurs du Roy ont differens ceremoniaux selon les coûtumes établies dans les diverses Cours où ils se trouvent, l’Ambassadeur de France à Rome donne la main chez luy aux Ambassadeurs des Couronnes & de Venise, & ne la donne point aux Ambassadeurs des autres Souverains, ausquels les Ambassadeurs du Roy la donnent dans les autres Cours ; l’Ambassadeur de France a le premier rang sur tous les Ambassadeurs des autres Couronnes dans toutes les ceremonies qui se font à Rome, après l’Ambassadeur de l’Empereur. Ces deux Ambassadeurs y reçoivent en tout des traitemens égaux & se traitent entr’eux avec la même égalité.

“ Les Ambassadeurs des Couronnes à Rome sont assis et découverts durant les Audiances que le Pape leur donne.

“ Il y a plusieurs Cours où les Ambassadeurs du Roy donnent la main chez eux aux gens qualifiez des pays où ils se trouvent, comme à Madrid aux *Grands d’Espagne* & aux principaux Officiers, à Londres aux *Lords Pairs* du Royaume, en Suede & en Pologne aux *Senateurs*, & aux grands Officiers, & ils ne la donnent point en aucun pays aux Envoyez des autres Couronnes.

“ L’Empereur reçoit les Envoyez du Roy debout & couvert, & demeure en cet état durant toute l’Audiance, l’Envoyé étant seul<sup>1</sup> avec l’Empereur debout & découvert.

“ Les Electeurs Laïques les reçoivent & leur parlent debout & découverts durant les Audiances publiques qu’ils leur donnent, & ils sont assis & couverts lorsqu’ils ont Audiance des Electeurs Ecclesiastiques.

“ Les Souverains d’Italie se couvrent & les font couvrir, excepté le Duc de Savoye, qui ne les faisoit pas couvrir, avant même qu’il fût parvenu à la Couronne de Sicile, & qui leur parlait debout & couvert, eux étant debout & découverts.<sup>2</sup>

Les Nonces du Pape en France, donnent la main chez eux au Secretaire d’Etat des affaires étrangères, & ne la donnent point aux Evêques ni aux Archevêques lorsqu’ils reçoivent leurs visites en ceremonie.<sup>3</sup>

“ Ils donnent la main chez eux aux Ambassadeurs des Couronnes & à celui de la Republique de Venise qui sont dans la même Cour, et tous les Ambassadeurs leur cedent la main en lieu tiers, excepté ceux des Roys Protestans, qui n’ont point de commerce public avec eux ; on leur donne le titre de *Seigneurie Illustrissime*, en leur parlant, & en leur écrivant, il

<sup>1</sup> This was formerly the rule at Vienna.

<sup>2</sup> Callières, 107.

<sup>3</sup> 131.

y end qui leur donnent le titre d'*Excellence*, comme aux Ambassadeurs, & ils le reçoivent d'ordinaire assez volontiers quoiqu'il soit un titre Laïque.<sup>1</sup>

“ Les Envoyez se rendent entr'eux les mêmes civilités que les Ambassadeurs à leur arrivée à l'égard des complimens des visites, les Envoyez de France & des autres Couronnes donnent la main chez eux dans toutes les Cours à tous les Envoyez des autres Souverains.<sup>2</sup>

§ 384. And the instructions given to the Marquis d'Hautefort in 1750, on his appointment by the King of France to represent him at Vienna, stated that—

“ Le sieur Morosini, ambassadeur de la république de Venise auprès du Roi, a refusé de visiter le Cardinal Tencin,<sup>3</sup> sous le prétexte que ce prelat ne voulait pas lui donner la main chez lui. Ce refus a paru d'autant plus singulier de la part de ce ministre que ses deux prédécesseurs immédiats n'avoient fait nulle difficulté de remplir ce devoir de politesse envers cette éminence. Comme le Comte de Kaunitz<sup>4</sup> voudra vraisemblablement suivre l'exemple du sieur Morosini, l'intention du Roi est que le marquis de Hautefort ne fasse point de visite aux cardinaux allemands, à moins que ceux-ci ne lui donnent la main chez eux ou qu'il soit bien assuré que le comte de Kaunitz aura reçu l'ordre de sa cour de se conformer en France au cérémonial observé jusqu'à présent par rapport aux cardinaux.”<sup>5</sup>

It is to be hoped that such pretensions on the part of cardinals and ambassadors have not survived to the twentieth century.

§ 385. *Conduct of Diplomatic Representatives of Belligerents towards each other during War-time.*

“ Les Ministres des Princes qui sont en guerre & qui se trouvent dans une même Cour ne se visitent point tant que la guerre dure, mais ils se font des civilités reciproques en lieu tiers lorsqu'ils se rencontrent, la guerre ne détruit point les règles de l'honnêteté ny celles de la générosité, elle donne même

<sup>1</sup> 132.

<sup>2</sup> 193.

<sup>3</sup> Who was also Foreign Minister.

<sup>4</sup> Appointed ambassador at Paris in 1750.

<sup>5</sup> *Recueil des Instructions*, etc., Austria, i. 326.

souvent occasion de les pratiquer avec plus de gloire pour le Ministre qui les met en usage, & pour le Prince qui les approuve.

"Le *Sieur de Gremonville* étant Envoyé du Roy à Rome durant la guerre entre la France et l'Espagne, un Moine Portugais lui découvrit la resolution qu'il avait prise de faire assassiner le *Marquis de la Fuente* Ambassadeur d'Espagne parce qu'il prétendoit de réüssir par ce moyen à délivrer *Dom Duarte*, frere du Roy de Portugal qui étoit prisonnier entre les mains des Espagnols, le *Sieur de Gremonville* en avertit le *Marquis de la Fuente* & en fut fort loué à la Cour de France & ailleurs comme le meritoit cette bonne action.<sup>1</sup>

This story recalls the incident of Charles Fox communicating to Talleyrand, in 1806, information regarding a scheme for the assassination of Napoleon, which had been disclosed to him by a Frenchman.<sup>2</sup>

§ 386. *Order of Precedence on the Occasion of Personal Meetings.*

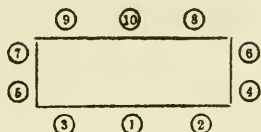
If the ceremony is one at which the Diplomatic Body has to take what may be termed an *active* part, its members, ranged according to the order of precedence prescribed by the *Règlement de Vienne*, are placed on the right of the *centre* or post of honour occupied by the most eminent person present, *i.e.* usually the Head of the State. If, however, the part taken by the Diplomatic Body is merely *passive*, *i.e.* that of spectators, a special place is set apart for it, such as a *tribune* in a church, boxes at a theatre for a *gala* performance, etc.<sup>3</sup>

"As regards *seats*, the place of honour and consequently the precedence attributed to the persons forming the company,—At a four-cornered table of which all four sides are occupied, or at a round or oval table, the first place is usually considered to be facing the entrance, and the last place is, that nearest to it. Counting from the first place, the order of seats is from right to left, and so on.

<sup>1</sup> Callières, 194.

<sup>2</sup> *Camb. Mod. Hist.*, ix. 269; J. Holland Rose, *Life of Napoleon I.* ii. 70; and § 108 *supra*.

<sup>3</sup> De Martens-Geffcken, i. 127



" In standing, sitting or walking, the place of honour is at the right, *i.e.* when the person entitled thereto stands or walks at the right. Precedence is when the person entitled goes a step before the other, who is at his left side, as in ascending a flight of stairs or entering a room.

" Amongst the Turks, and also at Catholic religious ceremonies, the left hand has often been regarded as the place of honour, so also among the Chinese.

" In a lateral arrangement, *i.e.* when the persons present stand side by side in a straight line, the outside place on the right, or the central place, is the first according to circumstances. When there are only two persons, the right hand is the first (② ①); if there are three, the middle place is the first (③ ① ②), the right hand the second, the left hand the third. If the number is four, the furthest to the right is the first place, the next is the second, the left of the latter is the third, and then the fourth (④ ③ ② ①).<sup>1</sup> Of five persons, the first is in the middle, immediately to the right is the second, to the left is the third, further to the right is the fourth, and the fifth is the furthest to the left (⑤ ③ ① ② ④). If six or more, the same principles are observed, according as the number is odd or even.

In perpendicular order, *i.e.* when one comes after the other, the foremost place is sometimes the most honourable, sometimes the last, the next person who follows or precedes has the second and so on. If there are only two, the front

place is the first (①); if three, the midmost is the first, the

second is in front, the third is behind (② ① ③). If four, the front

place is the fourth, the next is the second, the next to that the

first, the hindmost is the third (④ ② ① ③). If five, the midmost is the

<sup>1</sup> De Martens-Geffcken, i. 131, puts the order thus ④ ③ ① ② ⑤.



first, the second is immediately in front, the third is behind,

the foremost is the fourth and the hindmost the fifth ①. If

there are six or more, the same principle is observed according as the number of persons is even or odd.<sup>1</sup>

§ 387. *Signing Treaties and other Documents.*

1. The first-named in the text, especially in the preamble, has the first place, the second-named the second, and so on.

2. When the signatures are appended in two columns, the first place is at the top of the left-hand column, the second at the top of the right-hand column, and so on.

①	②
③	④
⑤	⑥

But when resident Ambassadors or Envoys are signing a protocol, they sign in the order of their local seniority, and not according to the alphabetical order of the French names of the countries they represent. If the minister for Foreign Affairs also signs, his signature takes the first place. But cases will be found where plenipotentiaries have disregarded all these rules, and have appended their signatures *pêle-mêle*; *vide* the protocol of November 21, 1818, of the "Congress" of Aix-la-Chapelle.

§ 388. In a diplomatic house precedence is accorded to officials of rank belonging to the country, provided no Ambassadors are present. The latter yield precedence only to the minister for Foreign Affairs.

On the other hand, in the house of an official or dignitary of the country, the diplomatists go before every one, except the minister for Foreign Affairs.

<sup>1</sup> Miruss.



In a diplomatic house the host gives precedence to his foreign colleagues over his own countrymen, no matter what the rank of the latter.

§ 389. *The title of "Excellency"* is given to Ambassadors orally as well as in written communications in virtue of their diplomatic rank, even though they may not be entitled to it by birth, social rank or by any other office held by them.

The title came into general use after the Peace of Westphalia. It is said to have been adopted by the French plenipotentiaries d'Avaux and Servien, in order to mark the difference between the ambassadors of crowned heads and those of lesser potentates.<sup>1</sup> After the Congress of Vienna it became general at all European courts. It is not given to an Ambassador by the sovereign to whom he is accredited. The latter addresses him as "Monsieur l'Ambassadeur." Of course, an Ambassador of princely rank is addressed by the corresponding title, *e.g.* in Germany as "Durchlaucht"; if he is a Cardinal by that of "Éminence."

§ 390. English usage does not accord it to Secretaries of State.<sup>2</sup> Only the Viceroy of Ireland, the Governors-General of Canada and India, the Governors of Calcutta, Bombay and Madras, the Commander-in-Chief in India, and the royal Ambassadors in foreign countries are in strictness entitled to it. The Colonial Secretary does not address governors of colonies as Excellency, but in the colonies they receive it from local society. It is also the custom to give it to the naval Commander-in-Chief on the China station. Perhaps it is good policy to accord it even to officials who are not really "Excellencies," if they are pleased with a title in excess of what belongs to their office.

<sup>1</sup> Flassan, iii. 93.

<sup>2</sup> See letter of C. Amyand to Colonel Yorke of July 4th, 1751 (S. P. France, 242, Pub. Rec. Off.).

The wives of those who bear it by right are also addressed as "Your Excellency."

§ 391. Callières says—

"On donne le titre d'*Excellence* aux Ambassadeurs extraordinaires et ordinaires, & on ne le donne point aux Envoyez, à moins qu'ils ne le prétendent par quelqu'autre qualité, comme celle de Ministre d'Etat, de Sénateur ou de Grand Officier d'une Couronne. Ce titre d'*Excellence* n'est point en usage à la Cour de France, comme il est en Espagne, en Italie, en Allemagne & dans les Royaumes du Nord, & il n'y a que les Etrangers qui le donnent en France aux Ministres & aux Officiers de la Couronne, & qui le reçoivent d'eux, lorsqu'ils ont des titres, ou des qualités qui leur donnent droit de la prétendre."<sup>1</sup>

§ 392. With respect to Envoys Extraordinary and Ministers Plenipotentiary, Rivier says: "Ce n'est que par courtoisie qu'on leur donne, ainsi qu'à leurs femmes, le titre d'*Excellence*."<sup>2</sup> García de la Vega, informs us that it is not due to any person in Belgium, but that the minister for Foreign Affairs accords it to the ministers for Foreign Affairs of Crowned Heads, to Ambassadors and to foreign Envoys of the second category. Ministers and the foreign Diplomatic Body give it to the king's ministers.<sup>3</sup>

§ 393. In Spain, "Excellency" is given to ministers of the Crown, councillors of State, the Archbishop of Toledo, to Knights of the Golden Fleece, Collar Knights and Knights Grand Cross of the Order of Carlos III, to Knights Grand Cross of several other orders, and to a host of other personages, including Spanish and foreign Ambassadors and ministers plenipotentiary of the first class. Señoría ilustrísima is given to third-class functionaries of the Diplomatic Body, and Señoría to the fourth and fifth classes of the same.<sup>4</sup>

<sup>1</sup> 125. This French practice is confirmed by a letter to Lord Holles of May 26th, 1664, from the Secretary Henry Bennet (*Orig. Letters of H. E. Sir Rd. Fanshaw*, 141).

<sup>2</sup> 450.

<sup>3</sup> *Guide Pratique*, 243.

<sup>4</sup> De Castro y Casaleiz, i. 360.

§ 394. The Peruvian *règlement* of November 19, 1892, for the reception of foreign ministers and cognate matters, gives directions to address an Envoy Extraordinary and Minister Plenipotentiary as *Vuestra excelencia*, a Minister Resident as *Vuestra Señoría Honorable*, a *Chargé d'affaires en titre* or *ad interim* as *Vuestra señoría*.

It is bad taste to prefix the title of "Excellency" to the names of plenipotentiaries stated in the preamble of a treaty or convention.

§ 395. *Dispute between France and Portugal* respecting the use of this title.

In April 1737 the Marquis Voyer d'Argenson was appointed Ambassador to Portugal, but his departure was delayed by a question whether he should address Quedez, the Portuguese Secretary of State, as "Excellency." The French alleged that Quedez had not the character of *Conseiller d'état*, the equivalent of minister, whilst Amelot<sup>1</sup> was actually minister, and it was, therefore, quite proper that the Portuguese Ambassador at Paris should give him this designation. The Portuguese, however, contended that Torci, who for many years had been French Secretary of State for Foreign Affairs, but not minister, had always received it, both in speaking and writing, from the Portuguese Ambassador. An attempt was made to remove the difficulty by a decree issued by the King of Portugal (June 29, 1739) that "Excellency" should be used by every one in addressing Secretaries of State. Cardinal Fleury and Amelot then decided that d'Argenson, on his arrival at Lisbon, should use *Vous* and *Votre Excellence* to the Secretary of State, but if the latter was not definitely appointed minister or *Conseiller d'état* d'Argenson should only give him *Votre Seigneurie*. The point had taken two years to settle, and in the end nothing came of it, in consequence of d'Argenson's resigning

<sup>1</sup> French minister for Foreign Affairs at the time.

because Fleury refused to allow him to draw full salary for the whole time that he had been kept waiting at Paris.<sup>1</sup>

§ 396. *Decorations and presents.*

When a diplomatist leaves the Court at which he has represented his sovereign, either on a permanent or temporary mission, he usually receives a decoration. The gold snuff-box set with brilliants of former times is now obsolete. In most cases the class of decoration is settled by precedent.

§ 397. Queen Elizabeth objected to her subjects wearing foreign *insignia* of knighthood. Two young Englishmen, Nicolas Clifford and Antony Shirley, had been admitted by Henry IV to the Order of St. Michael as a reward for their services. On their return to England they appeared at Court in the city displaying the *insignia* of the order, which provoked the Queen's anger, because the French king, without consulting her, had allowed these her subjects to take the oath to him on their admittance, and she threw them into prison. Nevertheless, she was too merciful to put the law in force against them, seeing that they were ignorant youths, and also because she entertained a special goodwill towards the King of France, who had conferred so great an honour upon them. She therefore ordered that they should return the *insignia* and take care to have their names removed from the register of the Order. Henri IV is said to have wittily replied: "I wish the Queen would do me a corresponding favour in return. I should like her to appoint to the Order of King Arthur's Round Table any aspiring Frenchman whom she might see in England." That Order, so celebrated in fable, disappeared long ago, just as that of St. Michael, in consequence of the disturbed state of affairs, had sunk so low, that a French nobleman said: "The chain of St. Michael, which was formerly a dis-

<sup>1</sup> Flassan, v. 108.

tion for very noble personages, is now a collar for every kind of animal." "But," continues Camden, "there will be another opportunity for speaking of foreign-conferred honours."<sup>1</sup>

This "other opportunity" was furnished by what happened in 1596, when the title of Count of the Holy Roman Empire was conferred on Thomas Arundel of Wardour, with remainder to all his male and female descendants. In the House of Lords it was argued on this occasion that an action for theft would lie against any one who branded with his mark the sheep of another, and an action of deceit against any one who by scattering food before the sheep of another enticed them into his own flock.<sup>2</sup> Queen Elizabeth is reported by Camden to have said, in connexion with this case: "There is a close bond of affection between princes and their subjects. As it is not proper for a modest woman to cast her eyes on any other man than her husband, so neither ought subjects to look at any other prince than the one whom God has given them. I would not have my sheep branded with any other mark than my own, or follow the whistle of a strange shepherd."<sup>3</sup>

§ 398. During the lifetime of Queen Victoria diplomatic servants of the crown were not allowed to accept foreign decorations, except in the case of special complimentary missions to foreign Sovereigns. In all such cases the Queen's permission to accept and wear had to be obtained; the intention to confer had to be notified to the Secretary of State through the British Minister accredited at the Court of the foreign Sovereign or through his Minister accredited at the Court of Her Majesty. This regulation was entirely in accordance

<sup>1</sup> *Annales Rer. Angl.*, Ludg. Batav., 1639, 630.

<sup>2</sup> *Annales Rer. Angl.*, Ludg., Batav., 1639, 734.

<sup>3</sup> The story is reproduced by Wicquefort in *L'Ambassadeur*, nouv. édit., augm., 1730, v. ii. 33, and Bk. ii. 99.



with the wishes of the diplomatic service. By an order of 1898 permission could only be obtained by the chief of a complimentary mission from Her Majesty, or by a military or naval attaché on the termination of his appointment.<sup>1</sup>

§ 399. In 1911, the regulation was relaxed in so far that private permission might be given to accept and wear on certain specified occasions, in a case where the decoration was more or less of a complimentary character. The rules of 1914 state that permission in such cases will only be given on exceptional occasions, when in the public interest it is deemed expedient that acceptance should not be declined. Private permission will generally be given for a decoration conferred (1) on Ambassadors or Ministers abroad when the King pays a State visit to the country to which they are accredited ; (3) on Members of Special Missions when the King is represented at a Foreign Coronation, Wedding or Funeral ; or on any Diplomatic Representative specially accredited to represent His Majesty on such occasions ; and such Members of his staff who actually attend the ceremonies in their official capacity ; (4) on Naval or Military Attachés only after completion of five years' service at the post to which they are appointed in that capacity. But private or restricted permission will not be given to (1) Ambassadors or Ministers when leaving ; (2) Members of British missions announcing the death of a Sovereign.

It is not the practice in England to offer a decoration to a foreign ambassador or other diplomatic agent on quitting his post.

§ 400. In *France*, authorization to accept and wear a foreign decoration is not given except on payment of a

<sup>1</sup> There is a well-known story that when Castlereagh, at Vienna in 1814, appeared in his ordinary dress-coat with only the riband of the Garter among a crowd of foreign ambassadors in full uniform and covered with orders, Talleyrand exclaimed, "*Ma foi ! C'est distingué !*" Croker, *Correspondence and Diaries*, iii. 191, puts the scene at Châtillon.



fee of 60, 100 or 150 francs, according to the class of decoration.<sup>1</sup>

In *Belgium*, no Belgian can obtain authorization to wear the decoration of a foreign Order except after a previous agreement between the Belgian Government and the Government of the sovereign who confers it.<sup>2</sup>

In *Spain*, permission must be obtained to wear a foreign decoration, and a fee of seventy-five *pesetas* has to be paid. The offer to confer must be made through the usual diplomatic channel.<sup>3</sup>

§ 401. An exchange of Notes of May 23 and June 24, 1903, between *Denmark* and *Sweden and Norway*, regulates the procedure with respect to the conferring of decorations on the subjects of the respective Powers.<sup>4</sup>

§ 402. The Constitution of the United States prohibits persons holding any office of profit or trust under them from accepting, without the consent of Congress, any presents, emoluments, office or title of any kind whatever from any king, prince, or foreign state. The printed instructions of the Department of State are that the offer of presents, orders or testimonials shall be respectfully but decisively declined.<sup>5</sup>

§ 403. In 1834, a rule was made in Great Britain prohibiting all persons in H.M. employment, in diplomatic, consular, naval or military capacities, from receiving from a foreign Government any presents, whatever might be the occasion on which presents might be offered. This rule has occasionally been relaxed by special permission of the Secretary of State. But in the "good old times" presents in money to members of the Foreign Office were usually made on the occasion of the exchange of ratifications of an important treaty. Thus, in 1786, in connection with

<sup>1</sup> García de la Vega, 1873, 110.

<sup>2</sup> *Ibid.*, p. 107.

<sup>3</sup> De Castro y Casaleiz, i. 320.

<sup>4</sup> *Nouv. Rec. Gén.*, 3<sup>ème</sup> série, vi. 303.

<sup>5</sup> J. W. Foster, *Practice of Diplomacy*, etc., 144, 150.

the Commercial Treaty between Great Britain and France, 500 guineas were given by the French Government, of which six-tenths went to the Under-secretaries, one-tenth to the chief clerk, and three-tenths to the junior clerks. In 1793, the Russian Government made a present of £1000 in connection with conventions relating to commerce and to the war with France, of which the two Under-secretaries received each £300, and the remainder was shared among ten other clerks. In the same year £500 were presented by the Sardinian chancery to the Under-secretaries and clerks for the ratification of a treaty between King George III and the King of Sardinia, and similar sums were received from the German Emperor and the Spanish, Prussian and Sicilian chanceries, which were divided in the same proportions. Thus each Under-secretary received in that year £900 from this source, in addition to his salary. Similar presents were made by the British Government to foreign chanceries in the King's name. The usual present to an ambassador on his retirement was of the value of £1000, and to an envoy of £500.<sup>1</sup>

§ 404. From this usage the transition to gifts intended to influence the course of politics in any particular country was easy. In 1727, the four Swedish commissioners who signed the Swedish accession to the Treaty of Hanover received 40,000 thalers from the English and French Courts.<sup>2</sup> This was probably in excess of the usual scale of such presents. Between 1765-6 England France and Russia spent huge sums in endeavouring to influence the Swedish Diet. France alone, in eight months, distributed among its members nearly 1,830,000 *livres*, of which Denmark provided 100,000, but nevertheless France did not succeed in obtaining a majority in her favour.<sup>3</sup>

The practice of giving presents of this character upon the exchange of the ratifications of treaties and con-

<sup>1</sup> J. Q. Adams, *Mem.*, iii. 527, cited by J. W. Foster, 147.

<sup>2</sup> Miruss, 200.

<sup>3</sup> Flassan, vi. 560.

ventions, or to Ambassadors or Ministers of foreign Courts sent to the King of England on missions of congratulations or condolence, or to the permanent representatives of foreign Powers on their taking leave on the termination of their appointments, was abolished in 1831 by a circular from Lord Palmerston.<sup>1</sup>

The United States, for a short period, from 1790 to 1793, adopted the practice of giving a gold chain to a foreign diplomatic agent on the termination of his appointment.<sup>2</sup>

§ 405. At the Congress of Vienna it was agreed that the plenipotentiaries should receive neither presents nor decorations, but each of the Powers concerned gave presents to Gentz, the principal secretary, and to others who had helped in drawing up the protocols. On the proposal of the English it was decided to present Gentz with a snuff-box and 800 gold ducats, to four of his assistants snuff-boxes and 500 ducats each, and to two more each 100 ducats, or 3000 ducats in all. This sum would come to over £1200. When the ratifications were exchanged of the treaty of peace of July 20, 1814, between France and Spain, presents, consisting of a gold snuff-box with a portrait of Louis XVIII, worth 15,000 francs, were provided for Labrador, the Spanish plenipotentiary, and a similar one, with the portrait of Ferdinand VII, for Talleyrand, besides £1000 (90,000 reals) for the clerks of the French and Spanish ministries for Foreign Affairs. On June 8, 9 and 10, 1817, a treaty was signed between Spain and the five Great Powers with respect to the succession to Parma on the death of the ex-Empress Marie-Loiuse, followed by the accession of Spain to the treaties of Vienna and Paris (of 1815). On this occasion the Spanish Ministro de Estado received five gold snuff-boxes with portraits of the respective sovereigns, and Fernan Nuñez, the Ambassador in London, received the same number. To the clerks of the Spanish ministry of State a sum of

<sup>1</sup> Hertslet, *Old Foreign Office* 174-6. <sup>2</sup> J. W. Foster, *Pract. of Dipl.*, 143.

450,000 reals (10,000 ducats) was given for the treaty of June 10 (Parma succession). Besides these gifts, various decorations of the order of Carlos III were distributed. As the English Foreign Office neither gave nor received decorations, a sum of £1000 was given by the English embassy to the secretaries of the Spanish embassy, a corresponding amount being assigned to the secretaries of the English embassy. Presents to the amount of 90,000 reals (£1000) were also given to the chanceries of the five Great Powers. Care was taken that the decorations given on both sides to the chancery clerks should be of corresponding class, a matter always considered to be of the highest importance even in modern days, when such trinkets are exchanged.<sup>1</sup>

At the end of 1817 the amount of the gifts in money bestowed by the contracting parties on the occasion of the conclusion of treaties, of royal marriages, of congresses and other conventions, and since then instead of jewellers' gold and silver work, mutually fixed in money, were divided among the officials of the State chancery at Vienna. The sum accumulated up to that date was estimated at 28,000 ducats.<sup>2</sup>

§ 406. At the Congress of Teschen, in 1779, Repnin and Breteuil, the representatives of the two mediating Powers, each received a portrait of Maria Theresa set in diamonds. Frederick gave to Repnin his portrait, set in diamonds, estimated at 20,000 thalers, and a very fine snuff-box to Breteuil, but of less value.<sup>3</sup>

Schmelzing states that Metternich, in November 1818, received the Grand Cross of the Netherlands Lion from the hands of the King of Holland. This was the twenty-fifth order with which His Highness was decorated.

§ 407. Ambassadors and other Heads of Missions, when invited to national or Court festivities, are entitled to a place of honour among the persons invited,

<sup>1</sup> Villa-Urrutia, iii. 381, 382 n; 448, 483.

<sup>2</sup> Schmelzing, ii. 208.

<sup>3</sup> Temperley, 203

which is fixed by local regulation or usage. Neglect of this ceremonial obligation, in itself of minor importance, has sometimes led to strained relations between Courts. In 1750, for instance, the Russian Envoy at Berlin was omitted from the list of persons invited to a certain Court festivity, because he was supposed to be absent from the capital. The incident led to a strong protest from his Court, and diplomatic relations between the two States were consequently suspended for a long period.<sup>1</sup>

§ 408. The absence of an Envoy from a Court ceremony may be of political significance. Thus, in 1818, the omission of the Prussian Envoy to attend the diplomatic circle on the French King's birthday gave rise to public comment, and the inference was drawn that the two Governments had been unable to come to an agreement about certain claims advanced by one of them. The allusions to these claims in both legislative chambers, combined with a new law of recruiting, excited a hope in the minds of certain hotheads that the claims would be referred to the arbitrament of arms. "Payez les étrangers du fer" was a common expression used in certain circles.<sup>2</sup> In 1823, Canning forbade the British Ambassador in Paris to be present at any rejoicings given in celebration of the French successes in the Peninsula.<sup>3</sup>

§ 409. At some capitals it is the usage for diplomats to visit each other and offer congratulations on their respective national fête-days or name-days of their sovereigns, such as July 14 for France, July 4 for Americans. Where diplomatic houses have a flagstaff on the roof or in the grounds, the national flag is flown as a compliment to the other friendly Power, and it will also be hoisted on the national fête-day of the country represented.

<sup>1</sup> Schmelzing, ii. 126.

<sup>2</sup> Schmelzing, ii. 227.

<sup>3</sup> Stapleton, *Political Life of George Canning*, i. 482.



## CHAPTER XXIV

### TERMINATION OF A MISSION

§ 410. Termination in general, and its various causes—§ 411. *Persona non Grata*; cases—§ 412. Genest—§ 413. Gouverneur Morris—§ 414. Pinckney—§ 415. Jackson—§ 416. Poinsett—§ 417. Jewett—§ 418. Segur—§ 419. Catacazy—§ 420. Dupuy de Lôme—§ 421. Casa Yrujo—§ 422. Wise—§ 423. Bulwer—§ 424. Poussin—§ 425. Marcoleta—§ 426. Crampton—§ 427. Russell—§ 428. Sackville—§ 429. Mendoza—§ 430. Aubespine—§ 431. Inojosa and Coloma—§ 432. Le Bas—§ 433. Bestoujew-Rioumine—§ 434. Palm—§ 435. Rasoumofsky—§ 436. Casa Flórez—§ 437. Dismissal of French and Belgian agents by Venezuela in 1895—§ 438. General observations.

§ 410. THE mission of a diplomatist accredited to a foreign Government, or to a Congress or Conference, may come to an end during his lifetime in any one of the following ways—

1. By the expiration of the period for which he has been appointed as, for instance, to a Congress or a Conference, when that comes to an end, or, if he has been appointed *ad interim*, by the return of the minister *en titre*. In neither of these cases is a formal recall necessary;

2. When the object of the mission is attained, as in the case of a ceremonial mission, or by the failure or completion of the negotiation entrusted to the minister;

3. By his recall, owing to the dissatisfaction of his own Government, or at the request of the Government to which he is accredited. To avoid scandal, gossip or loss of reputation to the official who has been so unfortunate as to incur the displeasure of his official chief, it is usual to intimate to him that he may come away on leave of absence, or that his presence is desired at home in order that he may be consulted;



4. By the expiration of the term of years for which the appointment was made, or by his resignation and its acceptance by his own Government. By English rules the Head of a Mission is appointed only for five years, and his appointment ceases at the end of that time, unless it be specially continued. It is also a rule that every member of the diplomatic service must retire on attaining the age of seventy, but cases have occurred, such as that of the late Lord Pauncefote, Ambassador at Washington, of the term being extended beyond that age ;

5. By the decease of his own Sovereign or of the Sovereign to whom he is accredited. The death of a Pope or of the President of a republic does not produce this effect, neither does the expiration of the term of office of a President. But when Thiers resigned in 1873 and was succeeded by MacMahon, the German Government insisted on new credentials, and its example was followed by Austria, Italy and Russia (Valfrey, *La diplomatie française*, ii, 190). Great Britain and other countries did not. In either of the two former cases fresh credentials are necessary, unless the letter of the Minister's new Sovereign notifying his accession expressly states that the minister is to be continued. In that case fresh credentials are unnecessary. During the interval which may elapse, unless there is reason to expect a change in the headship of the mission, the Minister's ordinary relations with the authorities of the country go on as usual, and if he is engaged on some particular negotiation he can continue to carry it on confidentially, *sub spe rati*. As a *Chargé d'affaires* is accredited only to the Minister for Foreign Affairs, the death of a Sovereign does not affect his position. Neither does the retirement of a minister for Foreign Affairs, and the appointment of a new one, in either country ;

6. If for some violation of international law with regard to himself, or on account of some unexpected

incident of serious gravity, the Agent assumes the responsibility of breaking off relations. At the present day, when all civilized capitals where diplomatists reside are connected by telegraph, such a case cannot easily occur ;

7. When the Government to which he is accredited, for any reason, sends him his passports without waiting for his recall. This may happen either when, in consequence of actions committed by him, the Government to which he is accredited no longer regards him as *persona grata*, or in consequence of offence given by his own Government the other resolves to break off relations. Such a rupture of relations is not necessarily followed by war. If a war has become inevitable, the accredited minister of one or the other party is more often instructed, after presenting an *ultimatum*, to ask for his passports. The minister of the other party is usually instructed to take the same step, if his passports have not been already sent to him ;

8. A mission terminates also by a change in the rank of the minister. This more often occurs by way of an increase of rank, as when an envoy is promoted to be ambassador, a minister resident to be envoy, or a *chargé d'affaires en titre* to be minister resident. This increase of rank may be either permanent or temporary, as, for instance, when an envoy is raised to the rank of ambassador for the purpose of investing the sovereign with the insignia of a high order, to ask for the hand of a princess on behalf of a member of the family of his own sovereign, for the wedding of a princess of his own country with the sovereign to whom he is accredited or with the heir to the throne, for a coronation or other state ceremony. When the event is over, he simply reverts to his proper rank. In such cases, until the diplomatic agent who is promoted notifies the accession of rank conferred on him, he continues to be regarded as holding his previous appointment.

Numerous instances of a minister becoming *persona*

*non grata* are recorded in the books, and others are known to have occurred without having been made public. In European countries such matters are usually covered up with official secrecy, though the facts are often whispered about and come to be matters of common knowledge among diplomatists.

Whatever may be the causes that lead to the termination of a mission, the minister remains in possession of the immunities and privileges attached to his public character until he leaves the country to which he has been accredited. In any case, his person continues to be inviolable.

When a minister is about to quit his post, whether on account of his being transferred elsewhere, or because he is being retired for age, he asks for a farewell audience in order to present his letters of recall. This is done through the minister for Foreign Affairs, by a Note enclosing a copy of the letter of recall. The farewell audience is usually a private one. But at distant posts, when he is being transferred elsewhere, he may have to take his departure before the letter of recall can reach him. In that case he asks for an audience, and it will be a matter within his own discretion whether he shall mention the fact that he will not return. Unless his new appointment has been already gazetted at home, he will do well to say nothing about it. Under such circumstances his letter of recall will be delivered by his successor at the same time as the latter presents his own credentials. The same course will be followed when he has been recalled in consequence of the dissatisfaction of his own Government, as under No. 3.

The sovereign to whom he has been accredited then addresses to the diplomatist's own sovereign what is termed a recredential, expressing his satisfaction with the agent's conduct and regret at his departure (*lettres de récréance, Récréditif*).

If he breaks off relations himself, or his own Government resolves on a rupture of diplomatic intercourse, he

does not ask for a farewell audience. If the latter is the cause of his return home, it often happens that he is instructed to come away without taking leave.

In 1833, Charles John XIV of Sweden (Bernadotte) allowed himself to express to the French envoy the suspicion that his Government was entering on a revolutionary propaganda in other countries, and the envoy received instructions to quit Stockholm without taking leave of the King.<sup>1</sup>

If the mission terminates by the death of the minister at his post, and if he is to be buried in the country where he was accredited, it is usual to offer a public funeral in his honour. The religious ceremony must depend on local law and usage. If his family desire to remove the corpse for interment elsewhere, their wishes must be respected, but in such a case they should be made known without delay, before temporary interment has taken place on the spot, as the laws of most countries render it difficult and troublesome to obtain an order for exhumation.

The Secretary of Legation, if there is one, will at once become *Chargé d'affaires*, and it will be his duty to ensure that no political documents or cyphers are left with the private papers of the deceased, which latter devolve on his legal representatives. If there is no secretary, the consul should be authorized to perform this duty. It is by no means desirable to admit the intervention of a colleague of the deceased, even though he be the representative of a friendly or allied Power, as seems to be assumed by most writers will be done. The representative of another Power has no such right. Nor has the local authority any right to meddle with the papers.

Questions regarding the succession to the personal property of the deceased must be regulated by the laws of his own country. It may be prudent for a diplomatist to make one of his staff an executor of his will in respect

<sup>1</sup> d'Haussonville, i. 48.

of his personal property in the country. His movable property can be re-exported without the payment of Customs duties, or what are known in some countries as *droits d'extraction*. These rules, of course, do not apply when the deceased was a subject or citizen of the country where he was accredited. The succession to any real property which the deceased may have possessed there, and any legal formalities are, of course, regulated by the *lex loci rei sitæ*.

It is customary to accord to the widow and family of the deceased minister, for a reasonable time, the immunities which they enjoyed during his lifetime.<sup>1</sup>

§ 411. *Persona non grata*. This term is employed to distinguish from the cases noted in Chapter VI those in which a diplomatist, after having been accepted and having entered on his functions, has given such offence to the Government to which he was accredited, as to induce them to ask for his recall. In some of these the request was granted, with more or less readiness, in others it was declined. In the latter class of cases it has usually happened that the offended Government has informed the diplomatist that no further official intercourse would be held with him, and sent him his passports.

§ 412. In 1792, the French Government appointed Mons. Edmond C. Genest as minister to the United States. On arriving at Charleston, in April 1793, before proceeding to Philadelphia to present his credentials to President Washington, he began to fit out and commission privateers to prey on the commerce of Great Britain, in violation of the neutrality of the United States. Worse still, French consuls, sitting as courts of admiralty, condemned prizes taken by such privateers, some of them having been captured in American waters. When he was remonstrated with and demands were

<sup>1</sup> The substance of these paragraphs is taken from De Martens-Geffcken, chap. ix.



made on him that these irregularities should cease, he refused. He expressed contempt for the opinions of the President, and questioned his authority. Mr. Gouverneur Morris, the American representative in Paris, was instructed to ask for his recall, which was immediately granted.<sup>1</sup> Genest subsequently became an American citizen, married a daughter of the Governor of New York, and remained in the United States till his death, which took place in 1834.<sup>2</sup>

§ 413. The French republican Government took advantage of the request for Genest's recall to ask for the withdrawal of Mr. Gouverneur Morris, whom they had never liked. This was at once conceded. The fact is that he had sympathized with Louis XVI, and had contrived, though he did not succeed in accomplishing, the King's escape from Paris.<sup>3</sup>

§ 414. In return for the dismissal of Casa Yrujo (§ 421 *infra*), the Spanish Government in 1804 asked for the recall of Charles Pinckney, the American minister at Madrid. The reason assigned was a threatening note which he had addressed to Cevallos, the Spanish Ministro de Estado. This so-called threatening note contained an intimation that he would inform American consuls of the critical state of the relations between the two countries, and direct them to notify American citizens to be ready to withdraw with their property. Pinckney was instructed to come away on leave of absence.<sup>4</sup>

§ 415. *Case of the British Minister at Washington, Mr. F. J. Jackson.* In a correspondence with the Department of State, in October 1809, respecting the repudiation by the British Government of an arrangement entered into by his predecessor, Mr. Erskine, for

<sup>1</sup> Moore, iv. 485.

<sup>2</sup> J. W. Foster, *A Century of American Diplomacy*, 157.

<sup>3</sup> Moore, iv. 489.

<sup>4</sup> *Ibid.*, iv. 490.



the settlement of the "*Chesapeake*" case and the withdrawal of the Orders in Council, this diplomatist intimated that when the agreement was concluded the United States Government were fully aware that Erskine had exceeded his instructions. The Secretary of State had already protested against this insinuation, and, on its being renewed, wrote to Jackson that no further communication would be received from him. Shortly afterwards Mr. Pinkney, American minister in London, was instructed to ask for Jackson's recall. This was consented to by Lord Wellesley, then Secretary of State for Foreign Affairs, who at the same time maintained that Jackson did not appear to have committed any intentional offence against the United States Government.<sup>1</sup>

§ 416. In 1829, the United States Government had come to the conclusion that the prejudices entertained by a portion of the inhabitants of Mexico against their Envoy, Mr. Poinsett, had greatly diminished his usefulness, and had decided to authorize his return home, if it appeared to him expedient. But before instructions to this effect could be despatched, the Mexican *Chargé d'affaires* presented a request for his recall, which was promptly granted, and a *Chargé d'affaires* was appointed to Mexico in place of a Minister.<sup>2</sup>

§ 417. In 1846, Mr. Jewett, the United States *Chargé d'affaires* at Lima, became involved in a dispute with the Peruvian minister for Foreign Affairs, in the course of which he characterized a decree which had been officially communicated to him as "a compound of legal and moral deformities presenting to the vision no commendable lineament, but only gross and perverse obliquities." He had also omitted to address the minister as Excellency or Honourable in his written

<sup>1</sup> A very full discussion of this case is to be found in Moore, iv. 514-30; Henry Adams, v. chap. vi.

<sup>2</sup> Moore, iv. 491.

communications. These lapses from courtesy drew upon him a rebuke from the Secretary of State, and finally he was recalled in consequence of a reiterated request from the Peruvian Government. In the despatch in which this decision was made known to Mr. Jewett, the Secretary of State laid it down that "if diplomatic agents render themselves so unacceptable as to produce a request for their recall from the Government to which they are accredited, the instances must be rare indeed in which such a request ought not to be granted. To refuse it would be to defeat the very purpose for which they are sent abroad, that of cultivating friendly relations between independent nations. Perhaps no circumstances would justify such a refusal unless the national honour were involved."<sup>1</sup>

§ 418. Mr. Henry Segur in 1863 was received as envoy extraordinary and minister plenipotentiary of Salvador at Washington. It was shortly afterwards alleged that he had attempted to violate the neutrality laws of the United States in connexion with a conflict between Salvador and two other Central American republics. Without however communicating to the Salvadorian Government their grounds of objection to him, the United States Government, through their minister to the Central American States, intimated that it would be agreeable if Mr. Segur could be relieved of his official functions and an unobjectionable person be appointed in his place. The American Minister, encountering a certain amount of unwillingness on the part of the Salvadorian President, said that matters had come to the knowledge of the United States President which rendered Mr. Segur's recall "necessary in the highest degree." In consequence, the foreign minister of Salvador sent a Note to the American Minister stating that "the presence of Mr. Segur being required" in Salvador, the President had been pleased to authorize

<sup>1</sup> Moore, iv. 492.

his recall in order that he might "render important services."

Subsequently, Mr. Segur and certain other persons were arrested<sup>1</sup> and committed to prison, on the ground that they were endeavouring to procure a war-steamer, purchase arms and enlist men to be employed in the conflict in question. The papers were submitted to the United States Attorney-General, who gave an opinion that the acts charged did not constitute an indictable offence.<sup>2</sup>

§ 419. In June 1871, Mr. Fish, the United States Secretary of State, instructed Mr. Curtin, American minister at Petersburg, that the conduct of Mons. Catacazy, Russian minister at Washington, both officially and personally, had for some time past been such as "materially to impair his usefulness to his own Government and to render intercourse with him, for either business or social purposes, highly disagreeable"; that under these circumstances the President was of opinion that the interests of both countries would be promoted if the head of the Russian legation were changed; and that it was hoped that an intimation to this effect would be sufficient. Some delay took place, owing to the absence of the Chancellor from Petersburg, and to the fact that the Grand Duke Alexis was about to visit the United States. The Secretary of State, however, telegraphed that a decision was important before the Grand Duke's arrival, as the President could not be expected to receive, as one of his suite, "one who has been abusive of him and is personally unacceptable"; and this urgent message was repeated a couple of weeks later without producing the desired effect. At the Emperor's request, the President eventually consented to tolerate Mons. Catacazy until after the Grand Duke's

<sup>1</sup> Possibly he had stayed longer than was necessary after his recall, and so lost the protection attached to the position of a diplomatist whose functions have ceased.

<sup>2</sup> Moore, iv. 500.

visit, but intimated that if he was not then recalled he would be dismissed. In an instruction to Mr. Curtin, the Secretary of State reaffirmed the American view that an official statement that a diplomatic agent had ceased to be *persona grata* is sufficient for the purpose of obtaining his recall. "The declaration of the authorized representative of the Power to which an offending minister is accredited is all that can properly be asked, and all that a self-respecting Power can give."

Finally, Mons. Catacazy wrote to the Secretary of State that he had received orders to sail for Russia immediately after the end of a tour which the Grand Duke was about to make in the United States. Mr. Fish replied that this was understood to be a practical compliance with the request for his recall.

From the fuller account contained in Moore's *Digest* (iv. 501) it is manifest that Mons. Catacazy had given serious cause for displeasure to the President. "He made use of the newspapers in an attempt to defeat the negotiations of the Joint High Commission for the settlement of the *Alabama* claims, and finally became personally abusive of the President and members of his Cabinet. When confronted with his acts he was guilty of prevarication and deliberate falsehood."<sup>1</sup>

§ 420. In February 1898, a translation of a private letter from Señor Enrique Dupuy de Lôme, the Spanish minister at Washington, to a Spanish journalist friend in Cuba, which had been abstracted from the mails at Havana. was published in a New York paper.<sup>2</sup> The letter described President McKinley as "weak and a bidder for the admiration of the crowd, besides being a would-be politician (*politicastro*) who tries to leave open a door behind himself while keeping on good terms with the jingoes of his party," and it intimated that it would

<sup>1</sup> J. W. Foster, *A Century of American Diplomacy*, 433

<sup>2</sup> W. F. Johnson, *America's Foreign Relations*, ii. 249.

be a good thing for Spain "to take up, even if only for effect, the question of commercial relations." Señor Dupuy de Lôme at once telegraphed to his Government asking to be relieved of his mission, and then, in an interview with the under-Secretary of State, Mr. Day, acknowledged that the letter was his composition. The American minister at Madrid was instructed by telegraph to ask for his immediate recall, on the ground that the letter contained "expressions concerning the President of the United States of such a character as to end the minister's utility as a medium for frank and sincere intercourse between this country and Spain." The United States minister at once sought an interview with the Ministro de Estado, to whom he read the telegram and gave a copy. The minister replied that the Spanish Government sincerely regretted the indiscretion of their representative, who had already offered his resignation. The United States minister subsequently addressed a Note to the Ministro de Estado, reminding him that though four days had elapsed since their interview, he had not yet had the satisfaction of receiving any formal indication that the Spanish Government regretted and disavowed the language and sentiments employed and expressed in Señor Dupuy de Lôme's letter. The minister replied that at the interview referred to he had stated that the Spanish Government sincerely regretted the incident, adding that "the Spanish ministry, in accepting the resignation of a functionary whose services they had been utilizing and valuing up to that time, left it perfectly well established that they did not share, and rather, on the contrary, disauthorized, the criticisms tending to offend or censure the chief of a friendly State, although such criticisms had been written within the field of personal friendship, and had reached publicity by artful and criminal means."

Two days later the Spanish Government appointed a new minister, and the Department of State informed the American minister at Madrid that the Note received by



him from the Ministro de Estado satisfactorily closed the incident.<sup>1</sup>

§ 421. The following are instances in which the recall of a diplomatic agent was asked for and refused, whereupon his dismissal followed ; also cases in which even the preliminary step towards obtaining withdrawal was not taken, but the minister was sent away without the option of recalling him being offered to his Government.

In September 1804, the Marqués de Casa Yrujo, Spanish envoy extraordinary and minister plenipotentiary to the United States, proposed to the editor of an American newspaper to oppose certain measures and views of the Government, and advocate those of Spain. The Government censured his action, as constituting a violation of an Act of Congress known as the " Logan Statute."<sup>2</sup> He defended his conduct in a Note, which he also caused to be published in the newspapers. On the ground of this attempt to tamper with the press his recall was asked for, through the American minister at Madrid. The Spanish Government replied that he had asked leave of absence to return home at a season convenient for making the voyage, and the President acquiesced in their request to let the object sought by the United States be accomplished in this mode. The minister remained, however, in America, and even returned to Washington. He was, therefore, informed that his remaining was " dissatisfactory " to the President, who expected him to leave the country as soon as the season permitted. In reply he maintained that he was still in possession of all his rights and privileges, and stated that he intended to remain in Washington as long as it might suit " the interests of the King " and his own

<sup>1</sup> Moore, iv. 607 ; *For. Rel. of U.S.*, 1898, 1007 and foll.

<sup>2</sup> The violation of the Logan Act was alleged to have been committed by certain American lawyers, who had furnished Yrujo with a legal opinion adverse to the view of the United States Government (Henry Adams, ii. 259).



"personal convenience." He followed this up with a somewhat intemperate protest, which he communicated to his colleagues and also caused to be published in the press. The American Government sent printed copies, together with a statement of the facts, to their representative at Madrid, instructing him to lay them before the Spanish Government. To their surprise, the Ministro de Estado Cevallos not only defended Casa Yrujo, but also declared that the communication of the papers without explanation was a disrespectful mode of addressing the Spanish Government. Yrujo's official relations with the Department of State ceased, but he continued to reside in the United States, where he had married a Pennsylvanian lady. Another Spanish diplomatist was received as *Chargé d'affaires*.<sup>1</sup>

§ 422. In 1847, the Brazilian Government pressed for the recall of Mr. Wise, the United States minister at Rio. As this would, by implication at least, have involved a censure on his action in connexion with the imprisonment of a lieutenant and three sailors of the United States navy, the President declined to accede to the request. At the same time, the Brazilian diplomatic agent was informed that the United States minister having some time previously asked to be relieved, his request would be granted, and he would quit Rio during the following summer.<sup>2</sup>

§ 423. The Paris revolution of February 24, 1848, led in Spain to the adoption of reactionary measures by the Government, which was then in the hands of the "Moderados." The reports received by Lord Palmerston from the British minister, Mr. Bulwer,<sup>3</sup> induced him

<sup>1</sup> Moore, iv. 508; Henry Adams, ii. chaps. xi. and xvi. According to J. W. Foster's account, it was Yrujo's violent language to Madison, the Secretary of State, in connexion with serious complications as to Florida, that was the cause of his recall (*A Century of Amer. Dipl.*, 219). The "complications" referred to consisted in the passage of what was known as the "Mobile Act," purporting to regard Florida as a part of the territory of Louisiana, sold by Napoleon to the United States in 1803 (Adams, 42, 261).

<sup>2</sup> Moore, iv. 495.

<sup>3</sup> Afterwards Lord Dalling.

to send out instructions to recommend "earnestly to the Spanish Government the adoption of a legal and constitutional course of government." After holding up as a warning to the Spanish Cabinet the recent fall of the King of the French, he added, "It would then be wise for the Queen of Spain, in the present critical state of affairs, to strengthen the Executive by enlarging the basis upon which the administration is founded, and by calling to her councils some of those men who possess the confidence of the Liberal party."

A slight outbreak having taken place, which was suppressed without much difficulty, Mr. Bulwer addressed an official Note to the Duque de Sotomayor, minister for Foreign Affairs, enclosing a copy of Palmerston's despatch, and advising the Spanish ministry "to return to the ordinary form of government established in Spain without delay." Sotomayor immediately returned to him both documents, accompanied by a long and strongly worded Note, expressing the resentment felt by the Spanish Government at the interference of Palmerston and Bulwer in the domestic affairs of the country. He quoted also from a Progresista journal a paragraph which seemed to indicate that the contents of Bulwer's Note were known outside, even before it reached the Ministerio de Estado. Bulwer replied, denying that the journal in question had any knowledge of his Note, and justifying his own action. This drew from Sotomayor a further response, refusing to recognize him as competent to discuss subjects affecting the internal policy of Spain. At the same time, he despatched instructions to the Spanish minister in London to ask for Bulwer's recall, which Palmerston refused. The minister repeated the request in writing, but withdrew it on the following day, in consequence of fresh instructions from Madrid. Bulwer in the meantime wrote again, controverting Sotomayor's arguments. Part at least of this correspondence was subsequently furnished, it would seem by the Spanish ministry, to

*Galignani's* journal, published in Paris. A dispute also arose as to asylum alleged to have been given by Bulwer to members of the Opposition suspected of having taken part in the outbreak. Shortly afterwards, a fresh insurrection broke out in Madrid, and next day Bulwer addressed another Note to Sotomayor, again justifying the original Note that had given so much offence, and complaining of the hostile language of the Government Press. Three days later, Sotomayor wrote to him a private letter, suggesting that he should anticipate as much as possible the leave of absence which he was contemplating. Bulwer replied that he could not "hasten his departure in consequence of a system of slander and libel to which no British minister or gentleman could make the slightest concession." Thereupon Sotomayor sent him his passports, and despatched an agent to London to offer explanations to the British Government, but Palmerston declined to receive him, as he was not provided with any credentials and possessed no diplomatic character. Isturiz, the Spanish minister, then presented a formal Note to Palmerston, enclosing copies of his instructions, and adding that the Spanish ministry were convinced that Bulwer had been making use of his official position in favour of a party which aimed at obtaining possession of power. This had led them to ask for his recall, but as that was refused, the dispute had ended by the delivery of his passports to the British minister. Palmerston replied, calling on him to present in writing forthwith a statement of the grounds on which the Spanish Government had proceeded. Two more argumentative notes were exchanged, in the last of which Isturiz was informed that it was impossible for the Queen to continue to receive him as the minister of the Queen of Spain, or for Her Majesty's Government to continue to hold official intercourse with him. Isturiz thereupon quitted England, and diplomatic intercourse between the two countries was interrupted until its renewal in the early part of 1850 at the request of the Spanish Government.

Mr. Bulwer's own opinion was that "the rancour to which it has been attempted to make me a victim, though it might in some degree have been prepared by the controversy on the Spanish marriages [in 1846], and the state of feeling thus got up at a former period, must, in confining myself to the close discussion of immediate events, be said to have commenced with a Note which I presented, and which my Government approved of my having presented, dated the 7th April."

This was the Note to Sotomayor enclosing a copy of Palmerston's despatch. Careful study of the papers presented to Parliament in connexion with this case, and with the Spanish marriage question, confirms Bulwer's conclusion.<sup>1</sup>

§ 424. Mons. Poussin was French minister at Washington in 1849.

A French citizen named Port, domiciled in Mexico, claimed the value of certain bales of tobacco, of which he alleged that he had been deprived by the United States general in command at Puebla. It appeared on inquiry that Port had purchased the tobacco at a public sale held by authority of the American military officer previously in command at that place, under the impression that it was public property; but when the discovery was made that it was private property, the sale was rescinded and Port's money was returned to him with interest. On these facts the United States Secretary of State informed M. Poussin that Port had no just claim. M. Poussin wrote in reply: "The Government of the United States must be convinced that it is more honourable to acquit, fairly, a debt contracted during war, under the pressure of necessity, than to avoid its payment by endeavouring to brand the character of an honest man." After a conference between them, however, the Secretary of State permitted

<sup>1</sup> Correspondence presented to Parliament, 1848. See also Bulwer's defence of his action, *Life of Lord Palmerston*, 1870-1874, iii. 239.

M. Poussin to substitute another Note omitting this sentence. Subsequently, in the course of a correspondence respecting the detention by Commander Carpenter, U.S.N., of a French ship until his claim for her salvage was satisfied, M. Poussin asked that the United States Government should disavow his conduct and reprove him. The Secretary of State, in transmitting Commander Carpenter's explanations, declined to comply with this demand. On this M. Poussin wrote back—

“ His [Comr. Carpenter's] opinions have little interest in our eyes, when we have to condemn his conduct. I called on the Cabinet of Washington, Mr. Secretary of State, in the name of the French Government, to address a severe reproof to that officer of the American Navy, in order that the error he has committed, on a point involving the dignity of your national marine, might not be repeated hereafter. From your answer, Mr. Secretary of State, I am unfortunately induced to believe that your government subscribes to the strange doctrines professed by Commander Carpenter . . . ; and I have only to protest, in the name of my government against these doctrines.”

The Secretary of State, in reply, acquainted him that the correspondence had been sent to the United States minister in Paris, for submission to the French Government. As the latter did not consider that it furnished sufficient ground for M. Poussin's recall, the President caused him to be informed that the United States Government would hold no further correspondence with him as the minister of France, and that this decision had been made known to his Government.

M. de Tocqueville, the French minister for Foreign Affairs, who had conducted the correspondence with the American Secretary of State in reference to this affair, shortly afterwards left office, and his successor dropped the matter. No interruption took place in the diplomatic intercourse of the two countries.<sup>1</sup>

<sup>1</sup> Moore, iv. 530.



§ 425. The United States Government in September 1852 asked for the recall of Señor Marcoleta, the Nicaraguan minister, which was refused by that Republic. In answer to this refusal, the Secretary of State informed Señor Marcoleta that instructions had been sent to Mr. Kerr, the United States minister to Central America, to renew the request for his recall and the appointment of a successor, and that in the meanwhile no communication could be received from him in his official capacity. The charge against him was that he had communicated to the Press the contents of certain proposals in regard to an inter-oceanic canal, which had been shown to him unofficially and in confidence. He not only endeavoured to frustrate the negotiation, but also boasted of his influence with certain Senators and threatened to use it. Mr. Webster, the Secretary of State, wrote on this occasion to the United States minister at Nicaragua that "such a request can never be refused between Governments that desire to preserve amicable relations with each other; for a minister whose recall has been asked loses, by that fact alone, all capacity for usefulness. If previously unacceptable, he must become doubly so by being retained in office in opposition to a distinct wish expressed for his recall. . . . The gravity of the step is a sufficient safeguard against its being rashly taken." Mr. Kerr was told that, without stating why the recall was asked for, he was at liberty to explain why such a statement could not be made with propriety.

A year afterwards, however, a new President of the United States having been elected, Señor Marcoleta presented fresh credentials as minister from Nicaragua, and continued to hold that position until April 1856.<sup>1</sup>

§ 426. During the Crimean War, the United States Government complained to the British Government that British officials and agents had organized and were

<sup>1</sup> Moore, iv. 497.



carrying out in the States an extensive plan for enlisting recruits for the British army, in violation of the neutrality laws and in infringement of the sovereign rights of the United States. The British Secretary of State disclaimed any intention of sanctioning a violation of the United States laws by British officials, but the correspondence shows that his views of what might legally be done in that way differed from those of the American Government. Prosecutions begun against some persons alleged to be acting as agents produced a written confession by one of the accused, implicating the British minister, Mr. Crampton, and the British consuls at New York, Cincinnati and Philadelphia. The United States Secretary of State thereupon asked for the recall of the minister and the removal of the consuls. Lord Clarendon, in reply, communicated declarations of the officials concerned, denying that they had committed the acts attributed to them, and expressed the hope that this would satisfy the American Government. The latter, being unable to accept this conclusion, discontinued further intercourse with Mr. Crampton and sent him his passports [the exequaturs of the three consuls were also revoked].

Lord Clarendon subsequently replied on the whole controversy that the British Government retained their high opinion of the zeal, ability and integrity of Mr. Crampton, and believed that in many important particulars the President had been misled by erroneous information, and by the testimony of witnesses unworthy of belief. Such a conflict of opinion on such a matter must necessarily be the subject of serious deliberation by both parties. If Her Majesty's Government had been convinced that Her Majesty's officers had in defiance of their instructions violated the laws of the United States, they would have removed these officers. In the present case Her Majesty's Government were bound to accept the formal and repeated declaration of the President of his belief that the British officials in

question had violated the laws of the Union, and were on that account unacceptable organs of communication, and "they could not deny to the United States a right similar to that which, in a parallel case, Her Majesty's Government would claim for themselves, the right, namely, of forming their own judgment as to the bearings of the laws of the Union upon transactions which have taken place within the Union."

This was in June 1856. The British Government, "while regretting a proceeding on the part of the President of the United States, which cannot but be considered as of an unfriendly character," did not suspend diplomatic relations with the American Minister in London, and in January 1857 Lord Napier was appointed to represent Great Britain at Washington.<sup>1</sup>

Mr. Crampton was made a K.C.B. on his return home, and appointed to Hanover in 1857, whence he was transferred to Petersburg in 1858.

§ 427. In 1875, Mr. Russell, United States Minister at Caracas, addressed a despatch to his Government, in which he said: "I feel bound to add that there are, in my opinion, only two ways in which the payment of so large an amount can be obtained. The first is by sharing the proceeds with some of the chief officers of this Government; the second by a display, or at least a threat, of force. The first course, which has been pursued by one or more nations, will, of course, never be followed by the United States. The expediency of the second it is not in my province to discuss."

This despatch having been published in a report to the House of Representatives, was resented by the Venezuelan Government, who thereupon sent Mr. Russell a Note breaking off official relations with him, and informing him that the ground for this action was that in the despatch referred to "an opinion is advanced and statements are made which constitute a most

<sup>1</sup> Moore, iv. 534; *Brit. and For. State Papers*, vv. xlvii and xlviii.

violent attack, because they insult the administration most grievously, besides involving a falsehood." Mr. Russell's passports were sent to him a fortnight later.

Obviously, Mr. Russell's despatch was not written for publication, but that fact did not render the attribution of corruptibility to "chief officers of the Government" less offensive to Venezuela.

The Venezuelan Government did not at first offer any explanation to the United States of the step they had taken, and the Secretary of State, therefore, wrote to the Venezuelan Minister at Washington, informing him that unless he should have been authorized to make one which might be regarded as satisfactory, the dignity of the American Government would require that his relations with it should also terminate. The Minister at first replied that he was instructed to offer the required explanation, but was unable to do so because of the loss of important papers by shipwreck. Three months later he wrote that he was instructed to withdraw and cancel the Note to Mr. Russell breaking off relations with him. A little later he communicated instructions from his Government, intimating that Mr. Russell would no longer be *persona grata*. The latter eventually resigned, but, having proceeded to Caracas, with the authorization of the Department of State, to present his letters of recall, the Venezuelan minister for Foreign Affairs declined to receive him.<sup>1</sup>

In this instance the United States Government seem to have taken a line somewhat inconsistent with their action in the Dupuy de Lôme and Sackville cases, in both of which they rested the demand for recall on the contents of documents written, indeed, by those diplomats, but not intended for publication.

§ 428. In 1888, Lord Sackville, the British Minister at Washington, received a letter purporting to come from a naturalized citizen of English birth, named "Mur-

<sup>1</sup> Moore, iv. 535.

chison," asking for advice as to the way he, and many other individuals in his position, should vote in the pending election of the President. The writer said they believed the Republican candidate to be a high-tariff man and an enemy to British interests, while Mr. Cleveland's policy has been favourable and friendly towards England. To this letter Lord Sackville at once replied that "any political party which openly favoured the mother country at the present moment would lose popularity, and that the party in power was fully aware of the fact"; that with respect to the "questions with Canada, which have been unfortunately reopened since the rejection of the [fisheries] treaty by the Republican majority in the Senate, and by the President's message alluded to [by the writer of the letter], allowance must be made for the political situation as regarded the Presidential election," and he enclosed an extract from a newspaper in which electors were distinctly advised to vote for Mr. Cleveland.

The letter of Lord Sackville found its way into the newspapers, and caused a lively discussion in the Press. The *New York Tribune* published a report of an interview with him, in which he was represented to have said that "both the action of the Senate and the President's letter of retaliation were for political effect," but in a private note to Mr. Bayard he said that his words were so turned as to impugn the action of the executive, and added: "I beg to emphasize that I had no thought or intention of doing so, and I most emphatically deny the language which is attributed to me by other papers of 'clap-trap' and 'trickery' as applied to the Government to which I am accredited."

Apart from the question whether the reply to "Mur-chison" was being made use of by the other party to influence the pending election, the President, it must be admitted, was entitled to regard the assumption by a foreign diplomatist of the function of influencing elections as improper, and in Mr. Bayard's despatch of

January 30, 1889, to Mr. Phelps, the American Minister in London, it is qualified as an "intolerable offence."

On October 25 and 26, 1888, Mr. Bayard telegraphed to Mr. Phelps, complaining of the letter and of the language used at interviews with newspaper reporters. He suggested that Her Majesty's Government should take appropriate action without delay. Lord Salisbury declined to act until he should be in receipt of the precise language of Lord Sackville and his explanation. Lord Salisbury appears to have said also that the Minister's recall would end his diplomatic career, which would not necessarily be the case if he were dismissed by the United States, for which there were precedents. This reply was telegraphed back to Washington, and two days later Mr. Bayard addressed a Note to Lord Sackville, informing him, by the instructions of the President, that he is convinced that "it would be incompatible with the best interests and detrimental to the good relations of both Governments that you should any longer hold your present official position in the United States," and enclosing a passport.

It is not necessary to go any farther, or to comment on the fact that the presidential election was impending. Lord Sackville unfortunately fell into a trap laid by an astute political wirepuller. Mr. J. W. Foster, in his *Diplomatic Memoirs*, speak of Mr. Bayard's "unseemly haste in the dismissal of Sackville-West, the British minister" (ii. 265). It was afterwards discovered that the writer of the letter signed "Murchison" was a native-born citizen of the United States, who received great credit from members of the Republican party "for his remarkable achievement."<sup>1</sup> Dr. Hannis Taylor seems to share Mr. Foster's opinion, for, after a paragraph in which he gives a short summary of the Sackville case, he proceeds to say, with reference to that of Bulwer in 1848: "Equally precipitate action, but on far graver

<sup>1</sup> *Pap. Rel. to the For. Rel. of the U.S.*, 1888, pt. ii.; *Brit. and For. State Papers*, lxxxii, 479; Moore, iv. 536.



provocation, perhaps, marked the dismissal of Mr. Bulwer, British minister to Spain, who, in 1848, was given his passports by the reactionary Government of Narvaez."<sup>1</sup> And we may further quote appropriately the opinion of the same author that

"when a sovereign dismisses an envoy, without waiting for his recall, on the ground of his misconduct, not only the dignity of the envoy, but that of his state is so involved that justice and courtesy alike demand that reasons should be given sufficient to warrant a proceeding of such gravity. In justice to itself the dismissing state should formulate the grounds upon which its action is based—in justice to its agent the accrediting state should ascertain whether such grounds rest upon adequate proof. There is no reasonable foundation for the position assumed by Halleck,<sup>2</sup> and reproduced by Calvo,<sup>3</sup> that a state is in duty bound to recall an envoy who has become unacceptable to the government to which he is accredited simply upon its statement that he is so; and that such state has no right to ask for reasons to be assigned why such envoy has become unacceptable since his reception as *persona grata*. Dana also falls into obvious confusion when he assumes that a dismissal or demand for recall may be rested upon the identical grounds upon which a state may object to receive a particular person in the first instance.<sup>4</sup> After all special objections to the personality of an envoy have been waived by his reception, it is obviously unjust that he should be expelled and disgraced without a reasonable and provable cause. As Hall has fairly expressed it: "Courtesy to a friendly state exacts that the representative of its sovereignty shall not be lightly or capriciously sent away; if no cause is assigned, or the cause given is inadequate, deficient regard is shown to the personal dignity of his state; if the cause is grossly inadequate or false, there may be ground for believing that a covert insult to it is intended. A country, therefore, need not recall its agent, or acquiesce in his dismissal, unless it is satisfied that the reasons alleged are of sufficient gravity in themselves."<sup>5</sup> No more just or reasonable rule can be formulated as a standard by which the merits of particular cases of dismissal or forced recall, past or present, may be tested."<sup>6</sup>

<sup>1</sup> *A Treatise on International Public Law*, 354.

<sup>2</sup> *Int. Law*, i. 307.

<sup>3</sup> *Droit International*, § 1365.

<sup>4</sup> Dana's *Wheaton*, Note 137.

<sup>5</sup> Hall, 6th edition, 298.

<sup>6</sup> Hannis Taylor, 350.



The author adds in a footnote—

“ The government of the U.S. has, however, given its sanction to the view maintained by Halleck, Calvo and Dana : ‘ The official or authorized statement that a minister has made himself unacceptable, or even that he has ceased to be *persona grata*, to the government to which he is accredited, is sufficient to invoke the deference of a friendly power and the observance of the courtesy and the practice regulating the diplomatic intercourse of the powers of Christendom for the recall of an objectionable minister ’ (Mr. Fish, Secretary of State, to Mr. Curtin, November 16, 1871, with reference to the Catacazy case).

§ 429. *Cases of Dismissal without Notice.*

In 1584, Francis Throkmorton was arrested on suspicion, in consequence of a letter he had written to Mary, Queen of Scots, which was intercepted. Camden<sup>1</sup> relates that

while this man was still in custody, and under examination Don Bernardino de Mendoza, the *Spaniards* Embassadour in England, secretly crossed the seas into *France*, in a great rage and fury, as if hee had beene thrust out of *England* with breach of the privilege of an Embassadour, whereas he himselfe being a man of a violent and turbulent spirit, abusing the sacred priviledge of an Embassyge to the committing of treason, was commanded to depart the land, whereas by the ancient severity, he was to be prosecuted (as many thought) with fire and Sword. For he had his hand in those lewd practises with *Throkmorton* and others for bringing in of forreiners into *England*, and deposing the Queene. And being for these things gently reprehended, hee was so farre from clearing himself from the things objected against him, by a modest answere, that he burdened the Queene and Councill with recriminations about detayning the *Genuans* money, ayding the Estates of the Low-Countries, the Duke of *Aniou*, and *Don Antonio*, and the depredations of *Drake*. But yet lest the *Spaniard* should *thinke*, that not *Mendoza's* crimes were punished, but the priviledges of his Embassadour violated, *William Waad* Clerke of the Councill, was sent into

<sup>1</sup> Camden's *Annales Rerum Anglicarum, et Hibernicarum regnante Elizabetha* ; Translated into English by *R.N.*, Gent. London, 3rd edit., 1635, 263 and 264.

*Spaine*, to informe the *Spaniard* plainly, how ill he had performed the office of his Embassie; and withall to signifie, (lest the Queene by sending him away might seeme to renounce the ancient amity betwixt both kingdomes) that all offices of kindnesses should be shewed, if he would send any other that were desirous to preserve amity, so as the same kindnesses might in like sort be shewed to her Embassadour in *Spaine*. But whereas the *Spaniard* vouchsafed not to give *Waad* audience, but referred him to his Councell. He taking it in disdain, declared boldly, that it was a thing by custome most received, even in the heat of warre, that Embassadours be admitted into presence even by enemies: and that the Emperour *Charles* the 5. the *Spaniards* father admitted an herald to his presence, who denounced warre against him from the *French* King; and so he flatly refused to impart the effect of his Embassie to his Councell. And when *Idiaco*<sup>1</sup> the *Spaniards* Secretary could by no cunning get from him what his message was, at length he understood the whole matter from *Mendoza*, who lurked in *France*. Then he, laying aside his publicke person, familiarly Signified to *Waad*, that he was sorry there were some, which cunningly went about to break off the amity betwixt both Princes, and to foster enmities: That injury had been offered to the Catholic King himself, and not to his Embassadors, to *Despesy*<sup>2</sup> heretofore, and now to *Mendoza*: Neither was there cause that he should accuse *Mendoza* any farther to the King, who had already smarted sufficiently for his fault, (if any were) by his disgracefull dismission out of *England*; or that he should complain he was not admitted audience. For, the Catholic King had but requited like for like, considering that *Mendoza* was dismissed by the Queene unheard: and as she had remitted *Mendoza* to her Councell, so did the King in like manner him to Cardinall *Granuill*. When *Waad* answered, that there was great difference betwixt, him, which had never offended the Catholic King, and *Mendoza* which had most grievously faulted against the Queen, insolently disdainig a long time to come, and had committed things unworthy of an Embassadour: yet could he not be admitted, but returned home unheard. The greatest part of the crimes which he would have objected against *Mendoza*, were drawn out of *Throkmorton's* confession,

<sup>1</sup> The correct name of this secretary is Don Juan Idiaquez (Gachard, 215).

<sup>2</sup> " In the year 1568. Don Ghuernon d'Espes was ordered to keep his house in *London*, for sending scandalous Letters to the *Duke d'Alva* unsealed " (*Cottoni Posthuma*, 4).

“ For when *Throkmorton* was to be apprehended he had privily sent away a cabbinet of secret matters to *Mendoza*.”<sup>1</sup>

§ 430. *Case of L'Aubespine*. Camden's account of this case is given with a marginal note, and is as follows:—“ *The French Ambassador practiseth the Queenes death. Anno Domini, 1587.*”

“ While these things, either out of hatred or affection, were curiously and copiously argued according to men's understandings, *L'Aubespine* the *French* Embassadour Legier in *England*, a man wholly devoted to the *Guisian* faction, supposing it best to provide for the captive Queenes safety, not by arguments, but by artificiall and bad practises, tampered first covertly for taking away Queene *Elizabeths* life, with *William Stafford* a young gentleman, and prone to apprehend new hopes, whose mother was one of the Queenes honorable Bed-chamber, and his brother at that time Embassadour Legier in *France*; and there he dealt with him more overtly by *Trappy* his Secretary, who promised him, if he would effect it, not onely infinite glory and great store of mony, but also especiall favour with the Bishop of *Rome*, the Duke of *Guise*, and in generall with all the Catholicks. *Stafford* as detesting the fact, refused to do it; Yet commended one *Moody* a notable hackster, a man forward of his hands, as one who for money would without doubt dispatch the matter resolutely. This *Moody* lying then in the publique prison of *London*, *Stafford* gave him to understand that the *French* Embassadour would very gladly speake with him. He answered, he was very desirous so to do, in case he were freed out of prison: in the mean time he prayed that *Cordalion* the Embassadours other Secretary, with whom he was well acquainted, might be sent unto him. The next day *Trappy* was sent, together with *Stafford*. He, after *Stafford* was moved aside, conferreth with *Moody* about the meanes of killing the Queene. *Moody* propoundeth poyson, or a bagge of gunpowder of twenty pound weight to be put under the Queenes bed and secretly fiered. These two wayes pleased not *Trappy*, who wished that such another resolute fellow might be found, as was that *Burgundian* which had murdered the Prince of *Orange*.

“ These things were soone after revealed to the Queenes Councill by *Stafford*. Whereupon *Trappy*, purposing to go into *France*, was intercepted, and being questioned touching these matters, confessed what I have said. Hereupon the

<sup>1</sup> R.N.'s translation of the *Annales*, 3rd edit., 1635, 264.

Embassador himselfe being sent for the 12. of January to *Cecyl* house, came in the evening, where were present by the Queenes commandement, *Cecyl* Lord *Burghley*, Lord Treasurer of *England*, the Earle of Leicester, Sir *Christopher Hatton*, Vice-Chamberlain to the Queene, and *Davison* one of her Secretaries. They signifie that they had sent for him, to informe him for what cause they had attached *Trappy* his Secretary as he was going into *France* ; and they laid open unto him all things in particular which *Stafford*, *Moody*, and *Trappy* himselfe had confessed, and commanded them to be called in to witnesse the same to his face. The Embassadour which had heard all this impatiently, and with a frowning countenance, now rose up and said, That he being the Kings Embassadour would not heare any accusation at all to the prejudice of the King his Master, and other Embassadours. When it was answered, that they should not be produced as accusers, but that he might see these things not to be feined and false, and that he might himselfe freely charge *Stafford* with falshood, he was satisfied. As soon as *Stafford* was brought in and began to speake, he interrupted him, rayling upon him, and affirming that *Stafford* was the first that propounded the matter, and that he had threatened him, unlesse he would desist, to send him bound hand and foot to the Queene : but yet had spared him out of his singular love to *Staffords* mother, brother, and sister. *Stafford* falling upon his knees, made deepe protestations upon his salvation, that the Embassadour first propounded the matter. When the Embassadour was now more vehemently moved, *Stafford* was commanded to withdraw, and *Moody* was not brought in.

And when *Burghley* had lightly reprovved the Embassadour as conscious or accessary to the plotting of so foule a fact, both by his own words and *Trappy's* confession ; He answered If he had been accessary, yet seeing he was an Embassadour, he ought not to make discovery thereof to any but the King his Master onely. When *Burghley* replied, That if it be not for an Embassadour to make any such discovery when a Prince his life is by wicked practise endangered (which notwithstanding is controverted) yet was it the duty of a Christian to repulse such injuries, for the safety not onely of a Prince, but also of any Christian ; This he stoutly denyed, and withall he told how a *French* Embassadour not long since in *Spaine*, having knowledge of a practise against the King of *Spaines* life, discovered it, not to the King of *Spaine*, but to the King his Master, and was therefore commended by the King and his Councill. But *Burghley* gravely admonished him to



beware how he committed treason any more, or forgot the duty of an Embassadour, and the Queenes clemency, who would not by punishing a bad Embassadour hurt the good : and that he was not exempted from guiltinesse of the offence, though he escaped punishment.”<sup>1</sup>

§ 431. *Inojosa and Coloma Case.*

The fullest account of this affair we have met with is as follows—<sup>2</sup>

“ Now there must a step be made backward to the yeare 1624, at which time there happend a noble (? notable) traverse reflecting on the two Spanish Ambassadors, *viz.* the Marquesse *de Inojosa*, and *Don Carlos Coloma* then Resident here, the last of a good disposition, the other sower and harsh, so that they were compared to oil and vinegar ; the businesse was thus ; the Prince of Wales being back from Madrid, matters began to gather ill blood twixt England and Spain ; for the Treaty both of the match and Palatinate were dissolved by Act of Parliament, and the Duke of Buckingham made use of Parliament, and Puritan (who swayed then most in the Houses) to compasse this worke. The Spanish Ambassadors understanding that the rupture of the matrimoniall treaty proceeded from the Practices of Buckingham, they devised a way how to supplant, and ruine him ; they fell into consideration that King *James* was grown old, wherefore the least thing might raise umbrages of distrust and feare in him, therefore by a notable way of plotting, they informed him at a private Audience that there was a dangerous designe against his Royall Authority traced by the Duke of Buckingham and his confederates, the manner of which conspiracy will appear in this following Memoriall or Remonstrance of Sir *Walter Ashton* left still Ambassador leger in the Court of Spaine, which he presented there to the King himselfe, which was thus.

TO THE KING.

SIR,

*SIR* Walter Ashton, Ambassador to the King of great Britain, saith, that the King his Master hath commanded him to represent unto your Majesty the reasons why he could receive no satisfaction by your Majesties answer of the fifth of January,

<sup>1</sup> R.N.'s translation of the *Annales*, 3rd edit., 1635, pp. 337, 338.

<sup>2</sup> Sir John Finett, *Finetti Philoxenis ; Som choice Observations*, etc London, 1656.

and that thereby by the unanimous consent of his Parliament, he came to dissolve the Treaties of Match, and Palatinat.

He received another answer from your Majesty, wherein he found lesse grounds to work upon, and having understood that neither by the Padre Marsto, or your Majesties Ambassadors who have assisted, these daies passed in his Court there was something to be further propounded and declared touching the businesse of the Palatinat, whereby he might receive contentment: The said Ambassadors to this day have not said anything at all to any purpose, which being compared with other circumstances of their ill carriage, he gathers and doubts that according to their ill affections and depraved intentions wherewith they have proceeded in all things, but specially in one particular, they have laboured to hinder the good correspondence with the so necessary and desired intelligence which should be conserv'd with your Majesty.

Moreover he saith, the King his Master hath commanded him to give an account to your Majesty, that in an Audience which he gave to the Marquesse of Inojosa, and to Don Carlos Coloma, they under the cloak and pretext of zeal, and particular care of his Majesties person, pretended to discover unto him a very great Conjururation both against his Royall Dignity and person. Which was, that at the beginning of this Parliament the Duke of Buckingham had consulted with certain Lords and others of the Arguments and means which were to be taken for the breaking and dissolving of the Treaties of Match and Palatinat, and their Consultations passed so far, that if his Majesty would not conform himself to their Councels, they would give him a house of pleasure, whither he might retire himself to his sport, in regard that the Prince had now years sufficient and parts answerable for the Government of the Kingdome: The Information was of that quality, that it was sufficient to make impressions in him of an everlasting jealousie, in regard that through the sides of Buckingham they wounded the Prince his Son with the Nobility, it being not probable that they could effect such a design without departing totally from that Obligation of faith and loyalty which they owed to his person and Crown, because the interested Lords made themselves culpable as Concealors: Nor is it likely the Duke would hurt (? hurl) himself upon such an enterprize, without communicating it first to the Prince, and knowledge of his pleasure.

But because the Information might be made more cleer, his Majesty did make many instances to the said Ambassadors, that they would give the Authors of the said conspiracy, this being the sole means whereby their own honour might be preserved, and



whereby the great care and zeal, they pretended to have of his person might appear: But the said Ambassadors instead of confirming the great zeal they made profession to bear him, all the answer they gave consisted of Arguments against the discovery of the said Conspirators, so that for Confirmation of the said Report there remain'd no other means then the examination of some of his Councell of State, and principall Subjects, which was put in execution accordingly, causing them to be put to their Oathes in his own presence, and commanding that such Interrogations and questions should be propounded unto them that were most pertinent to the accusation, so that not the least part, particle, or circumstance remain'd which was not exactly examined, and canvas'd: And he found in the Duke and the rest who were examined, a most clear and sincere innocency touching the impeachments and imputations wherewith your Majesties Ambassadors had charged them.

This being done, he returned to make new instances unto the said Ambassadors, that they would not prefer the discovery of the names of the Conspirators to the security of his Royall person, to the truth and honour of themselves, and to the hazard of an opinion to be held the Authors and betrayers of a plot of so much malice, sedition, and danger; but the sayd Ambassadors continued still in a knotty kind of obstinacy, resolving to conceal the names of the Conspirators, notwithstanding that he gave them Audience afterwards, wherein the Marquis of Inojosa took his leave.

But a few dayes after, they desired new Audience, pretending they had something to say that concerned the publick good, and conduced to the entire restitution of the Palatinate, and thereby to the conservation and confirmation of the friendship with your Majesty: But having suspended some few dayes to give them Audience, thinking that being thereby better advised, they would think on better courses, and discover the Authors of so pernicious a Plot, and having since made many instances to that effect, and attended the successe of so long patience, he sent his Secretary, Sir Edward Conway, and Sir Francis Cotington Secretary to the Prince, commanding them that they should signifie unto the sayd Ambassadors, that he desired nothing more then a continuance of the friendship betwixt the two Crowns, therefore if they had any thing to say, they should communicate it unto the sayd Secretaries, as persons of great trust, which he employed therefore expressly to that end, and if they made any difficulty of this also, then they might choose amongst his Councill of State those whom they liked best, and he would command that they should presently repaire unto them; and if this also should

*seem inconvenient, they might send him what they had to say in a Letter by whom they thought fittest, and he would receive it with his own hands.*

*But the Ambassadors misbehaving themselves, and not conforming to anything that was thus propounded, the sayd Secretaries, according to the instructions which they had received, told them that they being the Authors of an Information so dangerous and seditious, had made themselves incapable to treat further with the King their Master, and were it not for the respect he bore to the Catholick King, his dear and beloved Brother, their Master, and that they were in quality of Ambassadors to such a Majesty, he would and could by the Law of Nations, and the right of his owne Royall Justice, proceed against them with such severity as their offence deserved, but for the reasons aforesayd, he would leave the reparation to the Justice of their owne King, of whom he would demand and require it.*

*In conformity to what hath been sayd, the sayd Ambassador of the King of Great Brittain saith, That the King his Master hath commanded him to demand refaction and satisfaction of your Majesty against the sayd Marquis de Inojosa, and Don Carlos Coloma, making your Majesty judge of the great scandall, and enormous offence which they have committed against him, and against publick right, expecting justice from your Majesty in the demonstrations, and chastisement that your Majesty shall inflict upon them ; which, in regard of the manner of proceeding with your Majesty, and out of your Majesties owne integrity and goodnesse ought to be expected.*

*Furthermore, the sayd Ambassador saith That the King his Master hath commanded him to assure your Majesty, that hitherto he hath not intermingled the correspondence and freindship hee holds with your Majesty, with the faults and offences of your ministers, but leaves them and restraines them to their owne persons, and that he still perseveres with your Majesty in the true and ancient freindship and brotherhood, as formerly, to which purpose hee is ready to give a hearing to anything that shall be reasonable, and give answer thereunto, therefore when it shall please your Majesty to imploy any Ambassador thither, he will afford them all good entertainment, and receive them with that love which is fitting.*

*For conclusion the sayd Ambassador humbly beseecheth your Majesty that you would be pleased to observe and weigh well the care and tendernesse wherewith the King his Master hath proceeded towards your Majesties Ambassadors, not obliging them to any precipitate resolutions, but allowing them time enough to prove, and give light of that which they had spoken :*

*And besides by opening them many wayes besides, whereby they might have complyde with their Orders, if they had any such, which course if they had taken, they might well have given satisfaction to the King his Master, and moderated the so grounded opinion of their ill proceedings against the Peace, together with the good intelligence and correspondence 'twixt the two Crownes.*

Such was the complaint, or charge rather, which was exhibited by our Ambassador in *Spain*, against *Inojosa* and *Coloma* (for their misdemeanours in *England*) which fill'd that Court full of dark whispers for the present, and the World expected that the said Ambassadors should receive some punishment, or at least some mark of disgrace at their return; but matters growing daily worse and worse betwixt the two Crownes, they were rather rewarded then reprehended, *Inojosa* being promoted to be Governour of *Milan*, and *Coloma* received additions of employment and honours in *Flanders*.

But the Civilities of *England* at that time towards the said Ambassadors was much cryed up abroad, that notwithstanding so pernicious and machinious to discompose the whole English Court, and demolish *Buckingham*, yet were they permitted to depart peaceably, and though they had no Kings Ship to transport them, yet Sir *Lewis Leukner* was sent to conduct them to the Sea side, for prevention of any affront or outrage that might have been offered them."

Sir Robert Cotton,<sup>1</sup> at the request of *Buckingham*, drew up

"A relation of the proceedings against Ambassadors who have miscarried themselves, &c."

in which he quotes several cases known to have occurred, and the proceedings adopted in them, of which that of "*Barnardino de Mendoza*<sup>2</sup> for traducing falsly the Ministers of the State to further his seditious plots, who was restrained first, and after commanded away in the year 1586," was the most recent. He concluded by offering advice as to the best line of action to adopt, which was followed in the main part, especially in addressing an official complaint to the King of Spain, asking him to do justice in the matter. If he should

<sup>1</sup> *Cottoni Posthuma*, by J.H., Esq. London, 1651.

<sup>2</sup> See § 429.

refuse or delay redress, then it would be *transactio criminis* upon himself, and a dissolution of all amity and friendly intelligence, amounting to a declaration of war. But, as appears from Sir John Finett's narrative, the ambassadors quitted England after receiving intimation that the King would no longer hold intercourse with them, and so the affair ended.

The account in Wicquefort's *L'Ambassadeur et ses fonctions*, quoted in Phillimore's *Commentaries on International Law*, ii. 179, is apparently derived in part from Cotton.

### § 432. *Le Bas Case.*

In December 1652, Mazarin sent over to England as envoy to the Parliament the Président de Bordeaux, charged with a mission to re-establish friendly relations between the two countries. Hostilities not amounting to open war had arisen, and English privateers had even attacked some of the ships of the French King. Bas (he is called Baron de Baas in the French documents) was sent over early in January 1654 to assist Bordeaux, and returned to Paris with proposals from Cromwell. It was then decided to give Bordeaux the rank of Ambassador, and Bas was again despatched to England, bearing a letter from Louis XIV to Cromwell, accrediting both Bordeaux and himself. But it is quite clear that Bas was only councillor of embassy and that Bordeaux alone had the rank of Ambassador. It may be that Bas had secret instructions from Mazarin to stir up trouble, if he found a convenient opportunity. However that may be, early in April he sent a servant to one Dr. Naudin, a French anabaptist doctor,<sup>1</sup> inviting him to an interview, at which he proposed to him to foment "divisions and dissensions in this land," and promised to procure funds for the purpose from France.<sup>2</sup> How Bas came to know of Naudin's existence does not

<sup>1</sup> S. R. Gardiner, iii. 113, 121, 126, 151.

<sup>2</sup> Thurloe's *State Papers*, ii. 309, 351.



appear. Naudin informed a Colonel Buller, and they both made voluntary depositions. Guizot remarks : " Le fait même était incontestable, and probablement plus grave que Cromwell ne le laissa paraître, car il y a lieu de croire que M. de Baas, envoyé extraordinaire de Mazarin à Londres vers cette époque et adjoint momentanément à la légation de M. de Bordeaux, n'était pas étranger aux conspirateurs et à leur dessein."<sup>1</sup> Cromwell, on June 12, sent for Bas, and taxed him with his complicity in the plot. The consequence of this conversation was that Bas was ordered to leave the country in three day's time.<sup>2</sup> Bordeaux obtained an audience of Cromwell on the following day, and protested against Bas's being sent away so abruptly. He told the Protector that His Highness should first complain to the King, and ask for his recall, which would certainly be accorded. Cromwell replied that Bas was more guilty than Bordeaux supposed, and that such a person could not be suffered to remain any longer in England. A " letter of intelligence " from Paris, of July 18, n.s. reports—<sup>3</sup>

" This de Baas being sent away so civilly by the protector, is a great honour to his highness here ; for few would do him in such cases such honour for any master's sake."

Bordeaux, writing to Chaorst, the Governor of Calais, says—<sup>4</sup>

" They do expect here, that the court should punish Mons. de Baas ; and likewise my lord protector hath writ by this post both to his majesty and the cardinal.<sup>5</sup> His letters were brought to me to-night. Although I believe him innocent, yet the public interest will require, that Mons. de Baas must not be caressed and made much of at court at his first arrival."

<sup>1</sup> Cromwell, ii. 51.

<sup>2</sup> S. R. Gardiner, iii. 151.

<sup>3</sup> Bordeaux to Brienne, June 25th, in Guizot, 406 ; Thurloe, 437.

<sup>4</sup> Thurloe, 406, June 29th.

<sup>5</sup> These letters are in Guizot, ii. 414, 416.



In a letter to Chanut,<sup>1</sup> French ambassador in Holland, Bordeaux wrote as follows—

“ I will believe, that my lord protector doth not expect, that Mons. de Baas should be brought to a trial, and that he would be contented, if he might only be sent into some place, which might serve for a prison ; or at least that he might be removed from the Court, whence I have no news since these alterations. The sieges of Stenay and Arras do give them so much to do, that they can have no thoughts of England. I do expect an express from thence with news, which I am often asked after here : it were to be wished, that they may be conformable to their expectation, and that the letter of the lord protector to the king and cardinal might produce some outward demonstration of discontent with the proceedings of Mons. de Baas, who in effect could not imagine a better way to make him famous in history. I hope the court will do me that favour, as not to make me the author of disgrace, although it is so reported at Paris.”

In a later letter to Chanut,<sup>2</sup> speaking of an audience which he had had with Cromwell, he relates that—

“ The discourse, which was made upon the subject of the lord de Baas, was altogether conformable to the orders, which I had received from the court, to demand of the lord protector reparation of the injury, which was done to the king in the person of his minister ; or the proofs and depositions, which did cause his suspicions ; that so his majesty, by exemplary justice upon M. de Baas, if he be guilty, may make known to the people, that he had exceeded his orders. This was the subject of an audience, which his highness gave me on Monday last ; and he took this last part. You may believe that the audience did not pass altogether without speaking of other affairs : however, nothing was resolved, and I was referred to my commissioners, with whom I have had some conferences.”

It may be concluded that Mazarin did not take serious umbrage at the expulsion of Bas, for almost by return of post further instructions were sent to Bordeaux

<sup>1</sup> 455, Thurloe, July 24/14. Evidently translated from an intercepted letter in French, as likewise the next extract

<sup>2</sup> Thurloe, 492, Aug 7th, 1654 (n.s.).

respecting the treaty negotiations,<sup>1</sup> and the observations the French ambassador was instructed to present were apparently *pro formâ* only, as nothing more was heard of the incident.

There is a very confused account of the affair in Gregorio Leti's *Vita di Oliviero Cromvele*, Amsterdam, 1692, ii. 240, and on this is based Flassan's narrative in his *Histoire Générale de la diplomatie française*, iii. 197. The *Histoire d'Olivier Cromwel* (Paris, 1691), by Rague-net, states that the most Christian King had recalled Bordeaux from London, on account of Admiral Black's attack on a French ship in the Channel, leaving Baron le Bas there as resident. He tells the same story about the summons to Cromwell which we find in Leti and Flassan, and adds that after le Bas's dismissal Bordeaux returned to London. From the correspondence printed by Guizot it is clear that the latter was continuously in London from December 1652, till after the death of Cromwell in September 1658.

§ 433. *Case of Bestoujew-Rioumine*. Bestoujew-Rioumine, the newly appointed Russian resident in London, in 1720, was instructed by Peter the Great to deliver *mémoires*, recounting the wrongs the Tsar had suffered at the hands of the British Government. These were published simultaneously with their delivery. The King of England and his ministers naturally were profoundly irritated by this proceeding of the Tsar, and especially by a *mémoire* presented October 6, 1720. On November 15, a special meeting of the Cabinet was called at which this *mémoire*, just published, was discussed, and it was unanimously decided to suggest to Bestoujew that he should quit the country within a week. This he accordingly did, and diplomatic relations were not re-established until 1731, when Rondeau was appointed British Resident at Petersburg. He was

<sup>1</sup> Guizot, ii. 456, dated July 16, followed by a draft treaty dated August 5.

authorized on this occasion to raise no difficulty about the titles claimed by the Tsaritsa Anna Petrovna. Harrington, in his instructions to Rondeau, pointed out that the expressions "Imperial Majesty," "Majesty the Tsar," and "Majesty" had been employed indifferently in English books.<sup>1</sup>

§ 434. *Palm's Case.* The *London Gazette* of Tuesday, February 28, to Saturday, March 4, 1726, contained the following announcement—

"Whitehall, March 4th.

"This day Mr. Inglis Marshal and Assistant Master of the Ceremonies in the absence of Sir Clement Cotterel Master of the Ceremonies went by His Majesty's order to M. de Palm the Emperor's Resident, and acquainted him that he having in the audience he had of the King on Thursday last delivered into the Hands of His Majesty a Memorial highly injurious to His Majesty's Honour and the Dignity of his Crown; in which Memorial he has forgot all Regard to Truth and the due Respect to His sacred Majesty; and the said Memorial being also publickly dispers'd next Morning in Print together with a letter from the Count de Sinzendorff to him the said Palm still more insolent and more injurious than the Memorial if possible; His Majesty had thereupon commanded him to declare to him the said Resident Palm that His Majesty looked upon him no longer as a public Minister and required him forthwith to depart out of this Kingdom."

The origin of this affair is to be found in the alleged secret treaty between the Emperor and the King of Spain, for the restitution of Gibraltar and Minorca to the latter, and the re-establishment of the Stuart dynasty on the throne of Great Britain which was disclosed by Ripperda (§ 338) to the British Minister at Madrid.<sup>2</sup> Allusion was made to this secret treaty in the King's speech on the opening of Parliament, January 17, 1726/7.<sup>3</sup> Palm thereupon received instructions from

<sup>1</sup> F. de Martens, ix. (x), 52. It will be recalled that the French King had argued that "Majesté impériale" was not good French. See § 59.

<sup>2</sup> Cobbett, *Parl. Hist.*, viii. 505, 509.

<sup>3</sup> *Ibid.*, 524.

Count Sinzendorf, to present a memorial to the King, the text of which was enclosed to him, protesting against the statements contained in the King's speech, as "manifest falsehoods," and "insulting and injuring, in the most outrageous manner, the majesty of the two contracting Powers, who have a right to demand a signal reparation and satisfaction proportioned to the enormity of the affront."<sup>1</sup> The memorial<sup>2</sup> presented by M. de Palm declared the statements quoted to be founded on the falsest reports, and concluded by demanding on behalf of "his sacred Imperial Majesty" "that reparation which is due to him by all manner of right, for the great injuries which have been done to him by these many imputations." On the day following, printed copies of translations of both documents into English and French were sent by him to members of both Houses, aldermen of London and other persons.<sup>3</sup> Palm had been instructed to publish the memorial, but the whole proceeding was justly resented by the King, who requited the insult by expelling the Emperor's Resident and thus breaking off diplomatic relations.

§ 435. *Rasoumoffsky's Case.* In 1788, Gustavus III, King of Sweden, wishing to take his revenge for the intrigues carried on by Catherine II among the malcontent Swedish nobles, saw his opportunity when his enemy, engaged in war against Turkey, had equipped a fleet destined to proceed to the Mediterranean to operate in the Greek Archipelago. He proceeded then to send his own fleet to sea and to despatch a considerable land force into Finland, thus threatening Petersburg. On this, Count Rasoumoffsky, Russian envoy extraordinary at Stockholm, by orders of the Empress, addressed on June 18 a Note of protestation to

<sup>1</sup> *Ibid.*, 557, 558, 559 n., and P.R.O., S.P. Foreign, Germany, vol. lx.

<sup>2</sup> *Ibid.*, 555-7 n., and P.R.O., same vol. The copies at the P.R.O. are in print.

<sup>3</sup> *Ibid.*, 554.

the Chancellor Oxenstierna, in which he declared "to the minister of His Swedish Majesty, as well as to all those of the nation who had any share in the administration, that his mistress had no hostile intentions towards her neighbours, and that if such a formal and positive assurance was not sufficient to re-establish calmness and tranquility, she was resolved to await the event with that confidence and security with which she was inspired by the purity and innocence of her intentions, as well as by the sufficiency of the means placed in her hands by God, and which she had never employed but for the honour (*gloire*) of her empire and the welfare of her subjects."

The King of Sweden, regarding the expression used in this Note, in addressing it both to his ministry and "to all those of the nation who shared in the government," as a personal insult, and as intended to create disunion between the Government and the nation by recalling the anarchy to which the revolution of 1772 had put an end, caused the writer to be notified that he must quit the kingdom. The attempt was made to compel him to embark on board a Swedish yacht which would have transported him to Petersburg, but he refused, and remained at Stockholm till August 11, or seven weeks after he had been ordered to leave. An answer to Rasoumoffsky's Note of June 18 was despatched to Nolcken, Swedish ambassador at Petersburg, for delivery to the Russian Government. But Nolcken had already, on July 4, been informed that the Empress would no longer recognize him (this resolution having been taken on June 27), and he was ordered to leave in a week's time. Consequently the Note was delivered by Schlaff, the Secretary of Legation. It was conceived in such an insulting tone, like all the others exchanged between Sweden and Russia on this occasion, as Ch. de Martens observes, that Schlaff in his turn was ordered to leave, with the rest of the legation.<sup>1</sup>

<sup>1</sup> Ch. de Martens, ii. 275.



War was declared on both sides, and hostilities followed, as was certainly the intention of the King of Sweden from the very first.

§ 436. *Case of Casa Flórez.* In 1814, a Spanish subject named Espoz y Mina, who had failed in an attempt to seize the fortress of Pampeluna, took refuge in France. The Spanish Chargé d'affaires, Conde de Casa Flórez, having heard that he was staying at an hotel in Paris, proceeded to arrest him and some other Spanish subjects, who were probably his accomplices, with the aid of a commissaire de police, without applying first to the French Government. This gave great offence to the Government of Louis XVIII. Mina, having been set at liberty, was expelled from France, and Flórez' passports were sent to him, instead of asking for his withdrawal. A complicated negotiation followed to which an end was put by Napoleon's escape from Elba.<sup>1</sup>

§ 437. *Expulsion of French and Belgian Representatives from Venezuela.* In 1895, the Italian Government published a protocol signed at Caracas some time previously by the diplomatic representatives of Belgium, France, Germany and Italy, which in the opinion of the Venezuelan Government contained "gratuitous and defamatory statements reflecting on the honour of the State and the integrity of the Executive." Without taking the preliminary step of asking for the withdrawal by their governments of the two out of the original four diplomatists who were still resident, the Venezuelan Government sent them their passports. Simultaneously an explanation was addressed to the two Powers concerned. France, which was one of these, broke off diplomatic relations, while Belgium, the other, refrained from accrediting any one in place of the minister who had been dismissed. Eventually Venezuela invoked the good offices of the United States to bring about

<sup>1</sup> Villa-Urrutia, iii. 407.

the restoration of diplomatic relations, her Government declaring that Venezuela had intended no affront to France or Belgium, whose flags she had conspicuously saluted on the same day that she dismissed their personally objectionable agents.<sup>1</sup>

§ 438. It will, perhaps, attract notice that in a large proportion of the cases noted, the United States has been prominently concerned. But no inference can be drawn from this fact. It can be sufficiently accounted for by stating that many governments abstain as much as possible from publishing information about incidents of the kind, affecting their diplomatic service.

The conclusion to be drawn is that any Government has the right of asking for the recall of a foreign diplomatic agent on the ground that his continuance at his post is not desired, and the Government which has appointed him has an equal right of declining to withdraw him. In judging of any controversy that may arise regarding the demand and the refusal to comply, the grounds on which recall was asked for and those on which it was refused must be carefully weighed. If the Government which asked for the recall is dissatisfied with the grounds of refusal, it can send the diplomatic agent his passports. As long as the diplomatic agent of the dismissing Government has not rendered himself *persona ingrata* there is no reason for dismissing him. That would only be done if the dismissal was intended to wear the aspect of a national affront. But if the grounds of dismissal appear insufficient to the Government which accredited the diplomatist, it can indicate its view by entrusting the mission for a while to a *Chargé d'affaires*. In any case of the kind a Government asked to recall its agent will naturally desire to ascertain whether he has exceeded or acted contrary to his instructions, and thereby rendered himself responsible for the offence he has given. If it finds that

<sup>1</sup> Moore, iv. 548.

he has not, it cannot, out of self-respect, consent to the demand, and must leave it to the other Government to dismiss him. It is a tenable opinion that the agent's Government is entitled to satisfaction on this point. It may prove difficult for the historian, who has only official documents before him, to pronounce in each instance what was the determining factor in the decision to ask for a recall. Ostensibly taken on political grounds, it may also have been influenced in some cases by the general conduct of the agent.

END OF VOL. I.









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